(26,420)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

No. 401.

HENRY PETERS, EUGENE PETERS, AND ÆTNA LIFE INSURANCE COMPANY, PLAINTIFFS IN ERROR,

vs.

THOMAS VEASEY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

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a UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

No. 22435.

HENRY PETERS, EUGENE PETERS, and AETNA LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, Plaintiffs in Error,

vs.

THOMAS VEASEY, Defendant in Error.

William C. Dufour & George Janvier (composing the law firm of Dufour & Janvier), Arthur A. Moreno, and Isaac S. Heller, for plaintiffs in error.

E. M. Stafford, F. B. Freeland, Howard Carter, Jr., and Solomon Wolff, for defendant in error.

Writ of error to the Supreme Court of the State of Louisiana from the Supreme Court of the United States of America, returnable at the city of Washington, D. C., within thirty (30) days from the 7th day of March, A. D. 1918.

TRANSCRIPT OF RECORD.

1 Proceedings Had in the Civil District Court, Parish of Orleans, as per Agreement of Counsel at Page 62 of This Record.

Petition, Affidavit and Order.

Filed March 22nd, 1916.

Civil District Court, Division "A."

No. 115,878.

THOMAS VEASEY

vs.

HENRY PETERS, EUGENE PETERS, and AETNA LIFE INSURANCE CO. OF HARTFORD, CONN.

To the Honorable the Civil District Court for the Parish of Orleans:

The petition of Thomas Veasey, with respect shows, articulately, under oath, as follows, to-wit:

1. That he is above the age of majority and a resident of this City of New Orleans.

2. That Henry Peters and Eugene Peters are also both above the age of majority, and residents of this City of New Orleans.

3. That the Aetna Life Insurance Company, of Hartford, Connecticut, is a corporation organized under the laws of the State of Connecticut, but maintaining a branch office and doing business in this State, in this City of New Orleans.

4. That on and previous to Friday, August 6th, 1915, your petitioner was employed as a longshoreman by the said Eugene Peters and the said Henry Peters, being employed under the rules and regulations of the Longshoremen's Ben. Ass'n, with the rights and obligations provided thereby, in the verbal contract of employment between your petitioner and the said Eugene and Henry Peters.

5. That at the said time of employment, and under the said verbal contract, your petitioner was earning between $45.00 and $50.00 per month, or between $11.25 and $12.50 per week.

6. That on Friday, August 6th, 1915, your petitioner was working under the aforesaid verbal contract of employment, on board the steamship "Seria", then lying in port at this City; that
2 about twenty minutes after starting to work on the date mentioned your petitioner found it necessary to leave his place at work on the ship, and go to another part of the ship, in the course of his employment; that availing himself of the rules and regulations of the said Longshoremen's Benevolent Association, in such cases provided, your petitioner put another longshoreman at work in his place, temporarily.

7. That as your petitioner was going to another part of the ship as aforesaid, he accidentally fell through one of the hatches of the vessel down to the hold of the vessel, where he remained helpless, for some time, until he was discovered accident-ly.

8. Your petitioner shows that the said defendants Eugene Peters and Henry Peters were at the time conducting a business classed as "hazardous" under the terms of Act No. 20, of the Legislature of 1914, of the State of Louisiana, and that your petitioner was accordingly performing services arising out of and incidental to his employment in the regular course of the said business, at the time and place aforesaid; and that your petitioner is protected by the provisions of the said act.

9. Your petitioner shows that the aforesaid Aetna Life Insurance Company, of Hartford, was at the time aforesaid, and is now, the insurer against the liability of the said Henry Peters and Eugene Peters, arising under the aforesaid act of the legislature; and that under the terms of the said act, the said insurer is itself liable to your petitioner, in solido with the aforesaid insured parties.

10. Your petitioner further shows that as a result of the aforesaid accident, he suffered a fracture of the nose, of two bones in the right wrist, a compound fracture of the right thigh, and other injuries causing his total disability since the date of the accident to the present time, and showing evidences of permanent total disability to perform his accustomed duties as a laboring man.
3 11. Your petitioner shows that he is entitled, under the terms of the aforementioned act of the legislature, to a compensation of Ten Dollars per week, beginning with the second week

immediately following his said accident; and continuing as long as his total disability continues, not exceeding a period of four hundred weeks, under the provisions of the said act; and to such other compensation provided by the said act.

12. Your petitioner shows that he has made demand upon the said Eugene Peters and Henry Peters and the said Aetna Life Insurance Company, of Hartford, Conn., after due notice of the said accident, in accordance with the provisions of the aforesaid act; but that the said parties and the said company have failed and refused to pay your petitioner any compensation whatever, and have further refused and failed to provide your petitioner with the medical aid and attention, provided for the first two weeks following the accident, under the terms of the aforesaid act.

13. That your petitioner filed this complaint under the terms of the aforesaid act of the Legislature; and shows that he is entitled to the summary proceedings provided for therein.

Wherefore petitioner prays that the said Henry Peters, and the said Eugene Peters, and the said Aetna Life Insurance Company, of Hartford, Connecticut, be duly cited to appear and answer this petition (or complaint) within seven days after the service hereof; that the Court shall fix by order a time for the hearing and trial of this cause, not less than three weeks after the date of the filing hereof; and that after due proceedings had there be judgment in favor of petitioner, and against the said Henry Peters and the said Eugene Peters, and the said Aetna Life Insurance Company, of Hartford, Connecticut, in solido, for the full sum of Three Hundred and Five Dollars, with legal interest from judicial demand until paid, (for compensation for thirty and one half weeks, at $10.00 per week) and for such additional compensation as may be due at the time that judgment herein may be rendered, and for such further additional compensation as may be due after the date of the said judg-
4 ment; all in accordance with the provisions of the said Act No. 20, of the Legislature of Louisiana, of 1914.

Petitioner further prays for all costs of suit, and for all general relief etc.

(Signed) E. M. STAFFORD,
" F. B. FREELAND,
Counsel for Petitioner.

(Signed) TOM VEASEY,
Petitioner.

Affidavit.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans:

Personally came and appeared before me, the undersigned authority, Thomas Veasey, who, after being duly sworn according to law, did depose and say:

That he is the petitioner in the foregoing petition; that he has read and signed same; and that all the facts and allegations thereof are true and correct.

(Signed) TOM VEASEY.

Sworn to and subscribed before me this 21st day of March, 1916, at New Orleans, La.

(Signed) ETHELRED M. STAFFORD,
Notary Public.

Order.

Let the defendants herein named, Eugene Peters, Henry Peters, and the Aetna Life Insurance Company, of Hartford, Connecticut, be cited within four days after the filing of the foregoing petition, to answer said petition within seven days after the service thereof, and let April 24th, 1916 be fixed for the hearing and trial of the cause herein set forth.

New Orleans, March 22, 1916.

(Signed) T. C. W. ELLIS,
Judge.

5

Answer.

Filed March 29th, 1916.

Civil District Court, Division "A."

No. 115,878.

THOMAS VEASEY

vs.

HENRY PETERS, EUGENE PETERS, & AETNA LIFE INSURANCE COMPANY.

Now into Court through their undersigned counsel come Henry Peters, Eugene Peters and Aetna Life Insurance Company of Hartford, Connecticut, made defendants herein, and for answer to the petition of Thomas Veasey say:

I.

That they admit the allegations of Paragraph 1.

II.

That they admit the allegations of Paragraph 2.

III.

That they admit the allegations of Paragraph 3.

IV.

That they admit the allegations of Paragraph 4.

V.

In answer to the allegations of V, respondents aver that at the time of his injury, the said Veasey was earning approximately Forty five Dollars ($45.00) per month.

VI.

In answer to the allegations of Paragraph VI, respondents deny all of said allegations, except that they admit that on the morning that the said Veasey was injured he had voluntarily substituted under the rules of the Association, another laborer, to take his place.

VII.

In answer to the allegations of Paragraph VII, respondent admits that the said Veasey either fell through one of the hatches of the ship or climbed through one, and in so doing fell down and sustained certain injuries.

VIII.

In answer to the allegations of Paragraph 8, respondents admit the said allegations except that they particularly deny that at the time of his injuries petitioner was performing services for them or doing any work whatever, and they therefore deny that petitioner is protected by the provisions of the said act.

IX.

In answer to the allegations of Paragraph IX, respondents admit all the allegations of said Paragraph, except that they deny that the Aetna Life Insurance Company or anyone else is liable to petitioner.

X.

In answer to the allegations of Paragraph X, respondents aver that they are not sufficiently familiar with the extent of petitioner's injuries to intelligently answer thereto, and they, therefore, call upon petitioner for proof of said injuries.

XI.

In answer to the allegations of Paragraph XI, respondents deny all of the said allegations.

XII.

In answer to the allegations of Paragraph XII, respondents admit the allegations of said Paragraph.

XIII.

In answer to the allegations of Paragraph XIII, respondents admit the allegations of said paragraph.

XIV.

Further answering, respondents aver that on the morning of the said accident, petitioner presented himself to the foreman and availing himself of the rules referred to in plaintiff's petition, stated that he did not desire to work but desired to substitute someone else to take his place temporarily; that the foreman agreed to this
7 and thereupon a substitute was provided by petitioner; that sometime subsequent to this, petitioner was discovered in another part of the ship and it was discovered that he was suffering from certain injuries; that he had either fallen down the hold directly above the point at which he was found, or that he had climbed down that or some other hold; that in wandering around between decks, he had sustained the injuries complained of.

Respondents particularly aver that at the time of his injury, he was not employed by them or either of them and was not doing any work whatsoever.

Wherefore respondents pray that after due hearing as provided by the said act, there be judgment dismissing petitioner's complaint and for costs in favor of respondents.

(Signed) DUFOUR & DUFOUR,
Att'ys for Respondents.

(Signed) GEORGE JANVIER,
Of Counsel.

STATE OF LOUISIANA,
Parish of Orleans:

Alexander M. Sarage being duly sworn, deposes and says:

That he is the Manager of the New Orleans office of the Aetna Life Insurance Company of Hartford, Connecticut;

That none of the officers of the said company are presently within the State of Louisiana;

That the said Company is one of the defendants in the foregoing answer;

That affiant has read the foregoing answer and that all of the allegations thereof are true and correct, to the best of his knowledge, information and belief.

That he bases his opinion on verbal and written statements of the witnesses.

(Signed) ALEXANDER M. SARAGE.

Sworn to and subscribed before mé this 27th day of March, 1916.

[SEAL.] (Signed) GEORGE JANVIER,
Notary Public.

8 *Testimony of Thomas Veasey.*

THOMAS VEASEY, the plaintiff, being first duly sworn by the Court, testified as follows:—

Direct examination.

Mr. Freeland:

Q. Your name is Thomas Veasey?
A. Yes, sir.
Q. You are the plaintiff in this suit?
A. Yes, sir.
Q. What is your occupation, Mr. Veasey?
A. Longshoreman.
Q. What was your occupation on August 6, 1915?
A. Longshoreman, working in the hold.
Q. Were you working on August 6, 1915?
A. Yes, sir.
Q. Where were you working, then?
A. No. 3 hatch, we started that morning taking the hatches off. I put a substitute in my place while I went back to No. 5 to try to find my hook, on account that I needed it with this tomato paste, because they have tin foils on it, and you can't handle it without a hook, and while I was going back there, the canvas cover had been thrown back about one-third of the hatch. As I made the hatch, it must be someone pulled the cover on me and in the darkness, trying to wend my way, I fell in the hole.
Q. What ship was that?
A. Steamship Cerea.
Q. Now, at what time did you start to work on that morning?
A. About seven o'clock—around seven o'clock. Someone hollered "Take him off"—that means, "Get ready and take the hatches off and go to work."
Q. You say you had actually started removing the covers from the hatch?
A. Yes, that morning.
9 Q. On that morning?
A. Yes, sir.
Q. And how long had you been working?
A. From Monday.
Q. How is that?
A. From Monday. Started on the boat on Monday, and was working up until the time I was hurt, Friday morning.
Q. How long had you been working that morning?
A. Oh, I reckon I worked twenty or twenty-five minutes before I put a substitute in my place.
Q. When you put a substitute in your place, did you notify the foreman, or any other party in charge of the work?
A. No, you don't have to notify them; according to our by-laws, we can hire a substitute for a specified time—two and a half hours—and if he does not suit the foreman, in his work, the foreman can

discharge him and hire another man, but as long as he is able to do the work, the foreman never says anything to him.

Q. Now, Mr. Veasey, you spoke of "our by-laws"; to what by-laws do you refer?

A. Longshoremen—Longshoreman's Benevolent Association.

Q. Now, Mr. Veasey, what is the name of the man whom you put in your place?

A. Parlipiano. I don't know his first name; I believe his name is Joseph.

Q. Now, where was it that you fell, Mr. Veasey?

A. In the aft hatch on the boat; we call it No. 5; in the lower hold; from the first between decks all the way to the lower hold.

Q. And were you able to pick yourself up and walk away?

A. No, sir, not after I fell.

Q. How long did you remain there?

A. About two hours or something before the Customhouse officers came and lifted the cover from the hatch, and when I saw daylight peeping, I hollered to call the longshoreman—to call some of the longshoremen—brother members—to let them know that I was down there hurt with a broken leg and broken arm.

Q. Now, Mr. Veasey, for whom were you working at the time?

A. Henry Peters, stevedore.

Q. You had been working for him from the Monday, that you stated, before?

A. Yes. From Monday up until that present time when I was hurt.

Q. Had you been paid any part of your salary?

A. He had paid off Saturday—paid my brother while I was out in the Charity Hospital, which was twenty nine dollars and fifty cents ($29.50); the time I had made, myself, eleven dollars eighty cents ($11.80).

Q. Was that the only wages which you received for the time you worked?

A. Yes, sir, the only money I received.

Mr. Janvier: The amount is admitted. I think we admitted forty five dollars ($45) a month, the amount which you claim.

Mr. Freeland: We claim between forty five and fifty.

Mr. Janvier: It is admitted that petitioner was earning at the time of his injury, fifty dollars ($50) a month.

Mr. Freeland:

Q. How were you hurt at the time?

A. I had a small fracture of the right hip and a compound fracture of the left arm, and all badly bruised up, and it also knocked several teeth out of my mouth.

Q. And where were you taken after your injuries, Mr. Veasey?

A. To the Charity Hospital.

Q. How long did you remain there?

A. Well, all the time; I was confined there from the first time I went there, about five months and twenty days.

Q. What is the name of the Doctor that treated you when you went to the Charity Hospital?

A. Doctor Maes was my surgeon; Perret and Hyman were the ward doctors.

11 Q. Was it necessary to perform any operation on you?

A. Yes sir; they claimed it was on-account of my bone not having knitted the first time—no union.

Q. Did I understand you to say that there was or was not an operation?

A. There was an operation.

Q. Who performed that operation?

A. Doctor Maes.

Q. Are you still under the care of a physician?

A. I visited him occasionally, just to let him know how my leg is getting along, but there is nothing more to be done for me. Doctor Maes told me it would take a little time before I would get the use of my leg back.

Q. What is the name of the Doctor you are going to see now?

A. Doctor Gomilla.

Q. Do you know his first name?

A. Frank Gomilla; he is the doctor for the Longshoremen.

Q. Have you ever been paid any relief or compensation by Mr. Peters?

A. None whatsoever.

Q. Have you been able to perform any work since this injury?

A. Not of any kind; I am not able to walk, let alone do any work.

Q. You have been walking on crutches ever since?

A. Yes, sir.

Cross-examination.

Mr. Janvier:

Q. Now, Mr. Veasey, on the morning you were hurt, you say it was on August 6, 1915?

A. Yes, sir.

Q. What day of the week was that?

A. Friday.

Q. Who was in charge of the work there for Mr. Peters?

A. His son by the name of Anthony Peters.

Q. Anthony or Eugene?

12 A. Anthony. Eugene superintended the work and Anthony is foreman.

Q. Was Eugene there at the time?

A. I had not seen Mr. Eugene Peters on the work from the time I went to work; in fact, until they pulled me out of the hold, which they said was two hours and something afterwards; that was the first time I seen him that morning.

Q. You say, under the rules of your association, you have the right to substitute another member in your place?

A. Yes, sir.

Q. Now, was there any limit to the time of that substitution?

A. Yes, as I said before, two and a half hours.

Q. It cannot be less?
A. If he is suitable to the foreman.
Q. It cannot be less than two and a half hours, can it?
A. Oh, yes, you can get somebody out there to "spell" you.
Q. Yes, but that rule which you are talking about, does not it state that this substitution must be for at least two and a half hours?
A. Two and a half hours, yes, sir.
Q. Now, then, you substituted this other man to take your place while you wanted to do——
A. I didn't put him there to work for me; only as a "spell," which anybody has the right to get anybody to "spell" them, in case you want to get water, or anything like that.
Q. Is there anything in your rules about putting a man there to "spell" you?
A. Well, I don't know; I am not positive about that, but I know they all do that on the river front, and no foreman ever kicks about it; none of the foremen ever kick.

Mr. Janvier: I object to this line of testimony as to what they all do, because he has not made any allegations as to the custom of allowing them to "spell" each other. He says under their rules they
13 are allowed to substitute somebody else, and their rules are very definite; I have the rules and I now offer them in evidence, and will file them tomorrow morning.

The Court: It may be, in the practical part of this work, that they vary those rules. It may be they do not adhere to them.

Mr. Janvier: He has not put us on our guard about any variation of the rules.

The Court: I think, on the issue which has been raised, whether or not it was in line of his employment, that the general manner in which they conduct the business out there can be gone into, and in the event that there is any surprise on the part of the defendant here, I will give you time to produce evidence.

Mr. Janvier:

Q. Then, you put another man in your place for what purpose?
A. So that I could go down and find my hook back in No. 5 hatch.
Q. Did you say anything to the foreman about putting this man in your place?
A. No, sir.
Q. You had left your hook where?
A. I had dropped it back in No. 5 hatch Tuesday evening—afternoon; I had borrowed one, but had to return it on Thursday evening.
Q. So that you did not say anything to the foreman; you simply put another man in your place, and went off to find your hook?
A. Yes, sir.
Q. What was in No. 5 hatch where you were found?
A. When we first started to work in there, we took out all the lemons from the lower hold; that left tomato paste in the lower hold. Up in the deck, I think, they had a couple of hogsheads of garlic and more paste.
Q. What was below that, still, in the ship?
A. In the lower hold?

Q. Yes?
A. Tomato paste.
14 Q. Had not you taken that out?
A. No, sir; we only taken the lemons out.
Q. Do you know whether there was anything else in that hold?
A. Nothing that I seen except tomato paste and hogsheads of garlic.
Q. You were working in what hold that morning?
A. No. 3 hold, called the bunker hatch.
Q. About how many feet is it from No. 3 to No. 5 hatch, about?
A. Oh, I guess it must be about seventy five feet, or maybe more.
Q. And how long had you been working before you put this man in your place?
A. About twenty or twenty five minutes.
Q. Now, where did you get this man from that you put in your place?
A. Off the wharf.
Q. He was standing on the wharf there?
A. Not exactly on the wharf; he was walking over on the ship, and I called him.
Q. He was walking——
A. On the upper deck.
Q. Was he working for Peters at the time?
A. No, sir; I don't think so.
Q. He was not working for Peters; you called him and put him in your place?
A. Yes, sir.
Q. And then you went off to get your hook?
A. Yes, sir.
Q. And the next thing you knew was when they picked you up, two hours or so later?
A. Well, I don't know how long; that is what some of them said—two hours or so afterwards. I don't know, myself, how long it was.
Q. What were you unloading that morning?
A. We were going down to get some lemons out.
15 Q. In crates?
A. Boxes.
Q. About how heavy is a box of lemons, do you know?
A. About seventy five pounds.
Q. Does one man lift them, or more than one?
A. One man handles it; each man handles four boxes to every load; that is eight boxes to every load.
Q. Do you work in teams, or anything of that kind?
A. Partners, they call it, yes, sir; myself and another man.
Q. Let me ask you this: suppose you stop work, can the other man go on and keep on working?
A. No, it would be impossible to try to keep on with that work; you could not do it.
Q. Who was your partner?
A. William Dunn.
Q. What did you use those hooks for?
A. To break out the boxes.

Q. To break what?
A. Break out the tiers—the boxes; to pull the boxes out of the tiers, to loosen up the tiers.
Q. You had been working how long that morning?
A. I guess twenty or twenty five minutes.
Q. And you left and took this man who was not working, and asked him to work in your place?
A. Until I returned.
Q. Until you could get back?
A. Yes, sir.
Q. Did you ask the foreman, or anybody in charge, to let you off to get that hook?
A. No, sir.
Q. You just put him in there, yourself, and went off?
A. Yes, sir.

16 Redirect examination.

Mr. Freeland:

Q. Well. did Mr. Peters, or any of his representatives, ever refer you to any insurance company——

Mr. Janvier: I object.

A. No, sir.

The Court: The answer is negative.

ADMISSION.—It is admitted that the Aetna Life Insurance Company executed a compensation policy in favor of Henry Peters, Stevedore, and that the said policy was in force at the time of the accident to Thomas Veasey.

17 *Testimony of Thomas Veasey.*

THOMAS VEASEY, the Plaintiff, being first duly sworn by the Judge, testified as follows:—

Direct examination.

Mr. Carter:

Mr. Dufour: I unquestionably object to any further testimony and enter my protest against the plaintiff again taking the stand in this case.
Mr. Carter: It is the same point.
Mr. Dufour: I wish to enter my objection against the plaintiff taking the stand in this case. This is practically giving him a second trial of the case, when all of the testimony has been taken.
The Court: I understand it is to be limited to the sole question of intoxication.
Mr. Carter: Yes.
The Court: Then proceed.

Mr. Carter:

Q. Mr. Veasey, had you been drinking on the morning of August 5th, 1915?

A. No, sir.

Q. Had you been drinking the night before this accident?

A. No, sir.

Q. Where were you the night before the accident?

A. I was in bed. I got in about eight o'clock and went to bed; at about seven thirty o'clock I was talking out on the stoop to the landlady, Mrs. Ramirez; that was the night before; it was about seven thirty o'clock when I came in, and I guess I was not there no more than fifteen or twenty minutes when I went inside and went to bed.

Q. Did you stay in your room all night?

18 A. Yes, sir, until the next morning and she waked me up and I went into the dining room and had a cup of coffee; it was about six thirty o'clock when I left there.

Q. Mr. Veasey, did you walk out on the street in the morning, going towards your work with Mr. Ganna?

A. Yes, sir, we walked as far as St. Peter and Decatur Streets, or at Toulouse and Chartres Streets—we turned down on Chartres and St. Peter, and I left him at Decatur and St. Peter, right by the Jackson square.

Q. Did you ask Mr. Ganna to come around here and testify?

A. I have not asked him the first or second time, but this last time I asked him would he come down; that is when I sent him up to your office, when we went up there; now, this is the only time I ever asked him.

Q. Did you ask Mr. Ganna to come here when the testimony was first taken in this case?

Mr. Dufour: Does your Honor consider that competent testimony?

Mr. Carter: I submit that the witness on the stand was a foreigner, and did not understand English.

The Court: I think that his testimony will have to stand on its merits.

Mr. Dufour: I have no questions.

The Court: I would like to ask a question.

Q. What I want to know is, had you been drinking on that morning when you were hurt?

A. No, sir.

Q. Did you take a drink?

A. No, sir, I refused a drink.

Q. You did not stop in any coffee-house for a drink?

A. No, sir.

Q. You are certain you were not intoxicated, and not under the influence of liquor?

A. I was not intoxicated.

19 Q. Had you been drinking the night before?

A. No, sir.

Mr. Dufour: We ask for an opportunity to re-argue the case in the light of this evidence.

The Court: I will give you a chance. How will Wednesday, January 3rd, suit you?

Mr. Dufour: That will be all right.

Mr. Carter: That suits me.

Reasons for Judgment.

Filed January 23rd, 1917.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, Division "A."

No. 115,878.

THOMAS VEASEY

vs.

HENRY PETERS et als.

Reasons for Judgment.

The evidence leaves no doubt in my mind that plaintiff went to work for the defendants, at the usual hour on the morning of the accident; that having need of his hook, he got another man to take his place for a few minutes, or, as he says, to "spell him;" that he expected to return as soon as he could get the hook, in a few minutes, and was so expected by the man working with him and the man who "spelled him", and while going for the hook he fell into the hold of the vessel, and was injured, as he alleges, resulting in total disability, perhaps not permanent, but still his condition at this date (January, 1917).

One of defendants and another witness testify that defendant was drunk, asked defendant to excuse him from work, and put a man in his place. These two witnesses differ in details, but both swear he was staggering and drunk and did not go to work. Witnesses who were with plaintiff the night before and early in the morning of the accident, one who walked with him almost to the ship, the man who worked with him, called his partner, and the man who took his place to "spell" him for a few minutes, until he could get his hook, all testify that he was sober, and the two latter, that he went to work sober. He swears that he had not been drinking the night before, or that morning, and that he was sober.

The evidence is affirmative and, as I believe, from hearing and studying it, overwhelming, that he was sober.

No suggestion that he was drunk was made when his brother went, the next day, to see the defendant, in his behalf, and to inquire about his wages under the employers' liability act. The first intimation came from the agents of the defendants' insurers.

Drunkenness was not alleged in the defendants' answer as a defense.

One of the defendants' witnesses said that plaintiff could not have fallen into the hold, as the hatches were down. Plaintiff does not give a clear account of how he fell, but that is not material. Under the statute, issues of negligence, or contributory negligence, do not figure, as in ordinary personal injury cases arising under the general law. Plaintiff was defendants' employee, and they were dealing with each other under this special statute, and it is sufficient that the accident occurred while plaintiff was thus engaged in defendants' employ, unless he were drunk, or voluntarily and knowingly brought on his own misfortune.

Stress was laid in argument, that the witness Ganna was called by the plaintiff to prove that he (plaintiff) was sober before anything was said of his drunkenness or sobriety. This witness became confused under counsel's skillful cross-examination. The case was on trial on June 5th, 7th, 8th, and 12th and was reinstated, after submission, on October 20, and came up for final hearing December 21 20, 1916. The witness was not brought to the first hearings, but was requested to come at subsequent adjourned hearings. He got mixed as to dates, but I do not doubt that he was called after defendants' witnesses had testified as to the drunkenness of plaintiff, on June 7th, the second day of the hearings.

Stress was laid on the fact that defendant and another witness testified that, when they saw defendant drunk, he had a blue bundle, and this bundle was found near him when he was discovered, in the ship's hold. The hook he went to get was also found, not in the hold, but on the deck. I infer, from all this, that when he started to get the hook if he had such a bundle, he took his blue bundle along, to leave it where he had left the hook, and on his way fell into the hold.

I believe that the witnesses who testified that plaintiff was drunk, mistook plaintiff for some other person. At all events, their testimony is overborne by the great weight of the evidence.

A judgment in accordance with the directions of the statute will be entered in favor of the plaintiff.

New Orleans, Louisiana, January 8, 1917.

(Signed) T. C. W. ELLIS,
Judge.

Judgment.

Civil District Court, Parish of Orleans, Div. "A."

No. 115,878.

THOMAS VEASEY

vs.

HENRY PETERS, EUGENE PETERS, and AETNA LIFE INSURANCE CO. OF HARTFORD, CONN.

The law and evidence being in favor of the plaintiff, and for written reasons filed.

It is ordered, adjudged and decreed, that, Thomas Veasey, plaintiff, do have judgment against Henry Peters, Eugene Peters,
22 and the Aetna Life Insurance Company of Hartford, Connecticut, for the sum of Six 25/100 Dollars per week from August 20th, 1915, for the period of three hundred weeks and costs of this suit, with right to execution for the amount accrued, and said sum hereafter to be paid weekly, maturing, until the whole amount is paid. In the event that the temporary total disability of the plaintiff, should be removed, so as to enable him to work, and earn wages, the right of the defendants to take action for the suspension or modification of this judgment is reserved.

Judgment rendered and read in open Court January 9th, 1917.

Judgment signed in open Court January 24th, 1917.

(Signed) T. C. W. ELLIS,
Judge.

Motion for Appeal.

Filed January 26th, 1917.

Civil District Court, Div. "A."

No. 115,878.

THOMAS VEAZIE

vs.

H'Y PETERS, EUGENE PETERS, and AETNA LIFE INS. CO.

On motion of Henry Peters, Eugene Peters and Aetna Life Insurance Company, through their attorneys William C. Dufour and George Janvier, and on suggesting to the court that movers are aggreived by the judgment herein rendered on the 9th day of January, 1917, and signed on the 24th day of January, 1917, in favor of Thomas Veazie; that the said judgment is contrary to the law and the evidence and that movers desire to appeal suspensively and devolutively therefrom to the Supreme Court of the State of Louisiana;

It is ordered that a devolutive and suspensive appeal be granted to the said Henry Peters, Eugene Peters and Aetna Life Insurance Company of Hartford, Connecticut, defendants, returnable to the Supreme Court of the State of Louisiana on the 26th day of February, 1917.

Jan'y 26, 1917.

(Signed) T. W. C. ELLIS,
Judge.

23 Proceedings Had in the Supreme Court of the State of Louisiana, as per Agreement of Counsel, to be Found at Page 62 of This Transcript.

(*Answer of Thomas Veasey, Plaintiff and Appellee, to Appeal.*)

Filed March 8th, 1917.

Supreme Court of the State of Louisiana.

No. 22435.

THOMAS VEASEY, Plaintiff and Appellee,

vs.

HENRY PETERS et al., Defendants and Appellants.

Now into this Honorable Court, through his undersigned counsel, comes Thomas Veasey, plaintiff and appellee in the above entitled and numbered cause, and for answer to the appeal herein taken by Henry Peters, et als., the defendants and appellants, and made returnable into this Honorable Court on the 26th day of February, in the year 1917, says:

That the judgment appealed from should be amended by increasing the amount therein allowed to your respondent from $6.25 per week from August 20th, 1915, for a period of three hundred weeks, etc., to $10.00 per week from August 20th, 1915, for a period of four hundred weeks, together with $100.00, for medical aid, etc., all in accordance with the provisions of Act No. 20 of 1914 (judgment having been prayed for in accordance with the provisions of said act), as prayed for in his petition.

Wherefore, respondent prays that the judgment appealed from be amended by increasing the amount therein allowed to your respondent from $6.25 per week from August 20th, 1915, for a period of three hundred weeks, etc., to $10.00 per week from August 20th, 1915, for a period of four hundred weeks, together with $100.00 for medical aid, etc., all in accordance with the provisions of
24 Act No. 20 of 1914; that, as thus amended, the said judgment be affirmed and that defendants and appellants be condemned to pay the costs incurred in both courts.

And for all general relief, etc.

(Signed) E. M. STAFFORD,
" F. B. FREELAND,
Per H. C., JR.,
" HOWELL CARTER, JR.,
Attorneys for Plaintiff and Appellee.

(Endorsed on reverse:) No. 22435. Supreme Court of the State of Louisiana. Thomas Veasey, Plaintiff & Appellee, vs. Henry Peters, et als., Defendants & Appellants * * *. Answer of Thomas Veasey, Plaintiff and Appellee, to Appeal. Filed March 8th, 1917. (Signed) Percy J. Heines, Deputy Clerk.

(*Exception of No Right or Cause of Action.*)

Filed June 11, 1917.

Supreme Court of State of Louisiana.

No. 22435.

THOMAS VEASEY, Plaintiff & Appellee,

versus

HENRY PETERS, EUGENE PETERS, and AETNA LIFE INSURANCE Co., Defendants and Appellants.

Now into Court, through their undersigned counsel, come Henry Peters, Eugene Peters and Aetna Life Insurance Company, and except to the petition of plaintiff filed herein, and the proceedings had herein, and for ground of exception say that neither the said petition, nor the proceedings and record therein, set forth or show any right or cause of action in plaintiff and appellee or any cause of action known to the laws of the State of Louisiana or of the United States, and for further ground of exception, exceptors say that to award to plaintiff compensation under the circumstances set forth in the record in this matter would be to deprive defendants of their property without due process of law in contravention of the Constitution of the United States of America.

Wherefore, exceptors pray that these exceptions be maintained and this suit be dismissed at the cost of plaintiff and appellee.

(Signed) DUFOUR & JANVIER,
Attorneys.

George Janvier, being duly sworn, deposes and says:

That he is a member of the firm Dufour & Janvier, counsel for exceptors;

That he has read the foregoing exceptions and believes them to be well founded and that they are not filed for the purpose of effecting delay.

(Signed) GEORGE JANVIER.

(Endorsed on reverse:) No. 22435. Supreme Court of Louisiana. Thomas Veasey, Plaintiff & Appellee, vs. Eugene Peters, et als. Exception of No Right or Cause of Action. Filed June 11, 1917. (Signed) John A. Klotz, Dep. Clerk.

(*Final Judgment.*)

(Extract from Minutes.)

NEW ORLEANS, SATURDAY, June 30th, 1917.

The Court was duly opened, pursuant to adjournment. Present—Their Honors: Frank A. Monroe, Chief Justice. And Olivier O.

Provosty, Walter B. Sommerville, Charles A. O'Neill and Paul Leche, Associate Justices.

His Honor, Mr. Justice Sommerville, pronounced the opinion and judgment of the Court in the following case:—

No. 22435.

THOMAS VEASEY

VS.

HENRY PETERS, EUGENE PETERS, and AETNA LIFE INSURANCE COMPANY OF HARTFORD, CONN.

26 The exception of no right or cause of action is sustained; the judgment appealed from is annulled, avoided and reversed; and this suit is dismissed at plaintiff's costs.

His Honor, Mr. Justice O'Neill, dissents.

27 *Opinion of Supreme Court.*

UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

NEW ORLEANS, SATURDAY, June 30, 1917.

The Court was duly opened, pursuant to adjournment.

Present—Their Honors: Frank A. Monroe, Chief Justice; Olivier O. Provosty, Walter B. Sommerville, Chas. A. O'Neill, Paul Leche, Associate Justices.

His Honor, Mr. Justice Sommerville, pronounced the opinion and Judgment of the Court in the following case:

28 Mr. Justice Sommerville:

No. 22435.

THOMAS VEASEY

v.

HENRY PETERS, EUGENE PETERS, and AETNA LIFE INSURANCE CO. OF HARTFORD, CONN.

Appeal from the Civil District Court, Parish of Orleans, Division "A," Hon. T. C. W. Ellis, Judge.

Petitioner alleges that on or about Aug. 6, 1915, he was working on the steamship "Seria", which was then lying in the port of the city of New Orleans, as a longshoreman, in the employ of the stevedores, Eugene Peters and Henry Peters, defendants; that he was injured in

the manner set forth in his petition; that the defendants, Eugene and Henry Peters were, at the time, conducting a business classed as "hazardous" under the terms of act No. 20, of the legislature of 1914, of the state of Louisiana; and that he was accordingly performing services arising out of and incidental to his employment in the regular course of the business, at the time and place aforesaid; "and that your petitioner is protected by the provisions of the said act," (No. 20, 1914, p. 44). Further "your petitioner shows that he is entitled, under the terms of the aforementioned act of the legislature, to a compensation of ten dollars per week," etc.; "that your petitioner filed this complaint under the terms of the aforesaid act of the legislature; and shows that he is entitled to the summary proceedings provided therein;" and he prays for judgment against defendants for compensation for the personal injuries suffered by him, all under the said act No. 20, 1914, p. 44; instead of damages for the injuries suffered by him under the law as it existed prior to the passage of said act No. 20, and as it now exists.

Defendants answered; and there was judgment in favor of
29 plaintiff and against defendants; and defendants have appealed. Plaintiff has answered the appeal and asks for an increase of the damages allowed him in the judgment appealed from.

Defendants, in this court, have filed the following exception: "Now into court, through their undersigned counsel, come Henry Peters, Eugene Peters and the Aetna Life Insurance Co., and except to the petition of plaintiff filed herein, and the proceedings had herein, and for ground of exception say that neither the said petition, nor the proceedings and record herein, set forth or show any right or cause of action in plaintiff and appellee or any cause of action known to the laws of Louisiana or of the United States, and for further ground of exception, exceptors say that to award plaintiff compensation under the circumstances set forth in the record in this matter would be to deprive defendants of their property without due process of law in contravention of the constitution of the United States of America. Wherefore, exceptors pray that these exceptions be maintained and that this suit be dismissed at costs of plaintiff and appellee."

The exception of no right or cause of action, just quoted, is based on the conflict which the Supreme Court of the United States has held exists between state compensation statutes and the Constitution of the United States in all cases wherein suit is brought in compensation by an employe under the circumstances which would give rise to a right of the employe to sue in admiralty. Southern Pacific Co. v. Jensen, not yet reported.

If, under the circumstances, plaintiff cannot recover compensation, and is relegated to his right to sue for damages in the admiralty court or the state court, then there is no cause of action for the compensation sued for in this case; and the court cannot grant him the relief he is herein seeking. If no cause of action for compensation
ever existed in plaintiff the exception filed by defendants in
30 this court was properly filed; and it will be considered. C. P. Arts. 345, 346, 902; Brown v. Saul, 4 Martin (N. S.), 434; Union Bank v. Dunn, 17 La. 234; Montford v. Schmidt, 36 La. Ann. 750; La Casse v. N. O. T. & M. R. R. Co., 135 La. 129.

In the case of Brown v. Saul, supra, the court say: "A total want of legal right in a suitor in relation to the matters in litigation, ought to be taken into consideration and acted on by the courts of justice, at any stage of a cause."

The work in which plaintiff was engaged, as alleged by him, was that of a longshoreman, on the navigable waters of the country, and it was therefore maritime in its nature; "his employment was a maritime contract; the injuries which he received were likewise maritime; and the rights and liabilities of the parties in connection therewith were matters clearly within the admiralty jurisdiction. Atlantic Transport Co. v. Imbrovek, 234 U. S. 52, 59, 60." Southern Pacific Co. v. Jensen, — U. S., —., recently decided.

The right of plaintiff, a longshoreman, to sue his employers, stevedores, in admiralty for injuries sustained on a vessel lying at a dock in navigable waters is fully settled. In the last case on the subject, Atlantic Transport Co. v. Imbrovek, 234 U. S. 52, it is said in the syllabus: "Admiralty has jurisdiction of a suit in personam by an employe of a stevedore against the employer to recover for injuries sustained through the negligence of the latter while engaged in loading a vessel lying at a dock in navigable waters." And, in the body of the opinion it is stated: "The petitioner contends that a maritime tort is one arising out of an injury to a ship caused by the negligence of a ship or a person or out of an injury to a person by the negligence of a ship; that there must either be an injury to a ship or an injury by the negligence of the ship, including therein the negligence of her owners or mariners; and that, as there was no negligence of the ship in the present case, the tort was not maritime. This view we
31 deem to be altogether too narrow.

"The libelant was injured on a ship, lying in navigable waters, and while he was engaged in the performance of a maritime service. We entertain no doubt that the service in loading and stowing a ship's cargo is of this character. Upon its proper performance depends in large measure the safe carrying of the cargo and the safety of the ship itself; and it is a service absolutely necessary to enable the ship to discharge its maritime duty. Formerly the work was done by the ship's crew; but, owing to the exigencies of increasing commerce and the demand for rapidity and special skill, it has become a specialized service devolving upon a class 'as clearly identified with maritime affairs as are the mariners'. See The George T. Kemp, 2 Lowell 477, 482; The Circassian, 1 Ben. 209; The Windermere, 2 Fed. Rep. 722; The Canada, 7 Fed. Rep. 119; The Hattie M. Bain, 20 Fed. Rep. 389; The Gilbert Knapp, 37 Fed. Rep. 209; The Main, 51 Fed. Rep. 954; Norwegian Steamship Co. v. Washington, 57 Fed. Rep. 224; The Seguranca, 58 Fed. Rep. 908; The Allerton, 93 Fed. Rep. 219; Hughes, Adm. 113; Benedict, Adm. 4th ed., par. 207. The libelant was injured because the care required by the law was not taken to protect him while he was doing this work. We take it to be clear that the district court sitting in admiralty was entitled to declare the applicable law in such a case, as it was within the power of congress to modify that law. Waring v. Clark, supra; The Lottawanna, supra. The fact that the ship was not found to be liable for neglect is not controlling. If more is required than the locality of

the wrong in order to give the court jurisdiction, the relation of the wrong to maritime service, to navigation and commerce on navigable waters, was quite sufficient. Even in respect to contracts where subject-matter is the exclusive test, it has been said that the true criterion is 'whether it was a maritime contract, having reference to maritime service or maritime transactions.' Insurance Co. v. Dun-
32 ham, 11 Wall. 1, 26. The constitution provides that the judicial power shall extend 'to all cases of admiralty and maritime jurisdiction', and the act of congress defined the jurisdiction of the district court, with respect to civil causes, in terms of like scope. To hold that the case of a tort committed on board a ship in navigable waters, by one who has undertaken a maritime service, against one engaged in the performance of that service, is not embraced within the constitutional grant and the jurisdictional act, would be to establish a limitation wholly without warrant."

It is quite clear that plaintiff was engaged in a maritime service, and, while thus engaged, he was injured, and that he would have had a right of action against defendants in the admiralty court; as well as a right or cause of action against them for damages in the state court. The question now to be considered, under the exception filed by defendant, is: "Do the constitution and laws of the United States prevent a state court of common law from applying the state statutes in an action in personam arising upon navigable waters within the state, there being no act of congress applicable to the controversy?"

Section 2 of article 3 of the constitution reads as follows: "The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;—to all cases affecting ambassadors, other public ministers and consuls;—to all cases of admiralty and maritime jurisdiction;—to controversies to which the United States shall be a party;—to controversies between two or more states;—between a state and citizens of another state;—between citizens of different states;—to citizens of the same state claiming lands under grants of different states, and between a state, and citizens thereof, and foreign states, citizens or subjects."
33 Acting under authority of article 1, section 8, which empowers congress to make all laws necessary and proper for carrying into execution the powers vested in the government or in any department or officer thereof, the first congress, in the original judiciary act, (act Sept. 20, 1789, c. 20, sec. 9, 1 stat. 73, 77,) conferred upon the federal district courts "exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction * * * saving to suitors, in all cases, the right of a common law remedy, where the common law is competent to give it. The saving clause has been preserved in all subsequent provisions. R. S. Sec. 563 (8); Jud. Code, sec. 24, (3), 36 stat. 1087, 1091, c. 231.

The right of a common law remedy, reserved to suitors in all cases where the common law is competent to give it, in all civil causes of admiralty and maritime jurisdiction, over which the district courts of the United States have been given exclusive original cognizance, has been recently held by the Supreme Court of the United States, in the case of Southern Pacific Co. v. Jensen, supra, to take from the

state the power to interpose compensation statutes where maritime matters are involved. That decision was in a case where plaintiff sued for compensation, instead of damages, under the New York compensation statute, which statute appears to be similar in its effects to that of this state.

The title of the compensation act of this state, No. 20, 1914, p. 44, declares it to be: "An act prescribing the liability of an employer to make compensation for injuries received by an employe in performing services arising out of and incidental to his employment in the course of his employer's trade, business or occupation in certain trades, business and occupations, abolishing in certain cases the defenses of the assumption of risk, contributory negligence
34 and negligence of a fellow servant in actions for personal injury and death, establishing a schedule of compensation, regulating procedure for the determination of liability and compensation thereunder and providing for methods for payments of compensation thereunder."

In section 2 (*a*) of the act, the "loading or unloading the cargoes of vessels" is declared to be a hazardous trade, business or occupation; and section 2 provides that when a workman receives personal injuries by accident arising out of and in the course of such employment his employer shall pay compensation in the amount and to the person or persons therein specified; the act provides for an agreement to be entered into, between the employer and the employe to make the act binding upon them; and that such "an agreement shall be a surrender by the parties thereto of their rights to any other method, form or amount of compensation or determination thereof than as provided in this act, and shall bind the employe himself, his widow and relations and dependants as hereinafter defined, as well as the employer and those conducting his business during bankruptcy and insolvency." Section 4 of the act in paragraph (*a*) it is provided that an employe, working under said act, cannot be charged by his employer with having assumed the risks of his employment, that the injury to him was caused by the negligence of a fellow employe, or that the employe himself was negligent. In case of death the employer shall pay, or cause to be paid, the reasonable expenses of the last sickness and burial of his employe, who was injured in the course of his employment, not exceeding $100.00; and, in case of injury under like circumstances, a graduated scale of compensation is provided for, to be paid the employe, based on the earning capacity of the said employe at the time of the accident; in case of death, the relatives of the employe are to receive compensation. In section 34;
"that the rights and remedies herein granted to an employe
35 on account of a personal injury for which he is entitled to compensation under this act shall be exclusive of all other rights and remedies of such employe, his personal represent-ives, dependants, relations, or otherwise, on account of such injury."

It thus appears that this law of compensation gives to the injured employe a new and distinct cause of action from the former cause of action for damages for personal injuries inflicted through the fault of the employer. And, under the very terms of the law, the right or cause of action given by the law "shall be exclusive of all other rights

and remedies of such employe, his personal representatives, dependants, relations, or otherwise, on account of such injury."

Compensation under the act is to be made without regard to fault on the part of the employer, except where it is occasioned by the wilful intent of the injured employe to bring about the injury of himself; or results from the intoxication of the employe; or because of the injured employe's deliberate failure to use an adequate guard for protection against accident provided for him; or, by the employe's deliberate breach of atatutory regulations affecting safety of life or limb.

Compensation is not based on the rule of damages applied in negligence suits; but, in addition to providing for medicines, or other medical attendance or treatment, and funeral expenses, it is based solely on loss of earning power. "Thus the risk of accidental injuries occurring with or without fault on the part of employe or employer is shared by both, and the burden of making compensation is distributed over all the enumerated haza-dous employments in proportion to the risks involved."

The supreme court say in the Jensen case, supra, "considering our former opinions, it must now be accepted as settled doc-
36 trine that in consequence of these provisions congress has paramount power to fix and determine the maritime law which shall prevail throughout the country. Butler v. Steamship Co. 130 U. S. 527. In re Garnett, 141 U. S. 1, 14. And further, that in the absence of some controlling statute the general maritime law as accepted by the federal courts constitutes part of our national law applicable to matters within the admiralty and maritime jurisdiction. The Lottawanna, 21 Wall. 558; Butler v. Boston Steamship Co., 130 U. S. 527, 557; Work v. New York, 179 U. S. 552."

The court proceeds to say that if the several states of the union, by statutes, or by compensation statutes, subject foreign ships coming into their ports to obligations under such statutes, "the necessary consequence will be destruction of the very uniformity in respect to maritime matters which the constitution was designed to establish; and freedom of navigation between the states and with foreign countries would be seriously hampered and impeded. A far more serious injury would result to commerce than could be inflicted by the Washington statute authorizing a materialman's lien condemned in The Roanoke. The legislature exceeded its authority in attempting to extend the statute under consideration to conditions like those here disclosed. So applied, it conflicts with the constitution and to that extent is invalid.

"Exclusive jurisdiction of all civil cases of admiralty and maritime jurisdiction is vested in the federal district courts, 'saving to suitors in all cases the right of a common law remedy where the common law is competent to give it.' The remedy which the compensation statute attempts to give is of a character wholly unknown to the common law, incapable of enforcement by the ordinary processes of any court and is not saved to suitors from the grant of exclusive jurisdiction. The Hine, 4 Wall. 571, 572; The Belfast, 7 Wall. 626, 644; Steamboat Co. v. Chase, 16 Wall. 522, 531, 533; The Glide, 167

U. S. 606, 623. And finally this remedy is not consistent
37 with the policy of congress to encourage investments in ships manifested in the acts of 1851 and 1884 (R. S. 4283, 4285; sec. 18, act of June 26, 1884, 23 stat. 57, ch. 121) which declare a limitation upon the liability of their owners. Richardson v. Harmon, 222 U. S. 96, 164.

"The judgment of the court below must be reversed and the cause remanded for further proceedings not inconsistent with this opinion."

The suit of plaintiff is a civil action in personam, having a maritime origin, of which the courts of admiralty have exclusive jurisdiction, "saving to suitors, in all cases, the right of a common law remedy, where the common law is competent to give it." But, as it is not a suit for damages, which was known as a common law right or remedy for injuries received, at the time of the adoption of the constitution or the original judiciary act, in 1789, the state cannot interpose its power and give to the plaintiff a cause of action, maritime in its nature, which did not exist in his favor at that time.

The exception of no right or cause of action is sustained; the judgment appealed from is annulled, avoided and reversed; and this suit is dismissed at plaintiff's costs.

O'Neill, J., dissents.

38 *Syllabus.*

1. A total lack of a cause of action may be taken advantage of by exception at any stage of the proceeding, even in the supreme court.

2. "Admiralty has jurisdiction of a suit in personam by an employe of a stevedore against the employer to recover for injuries sustained through the negligence of the latter while engaged in loading a vessel lying at the dock in navigable waters."

3. In any case where the injured employe could have sued his employer in admiralty to recover damages for injuries, the state compensation law has no application; and under such circumstances a suit for compensation, instead of a suit for damages, must be dismissed whether it be brought in the United States court or in the state court.

39 (*Hearing Granted.*)

(Extract from Minutes.)

NEW ORLEANS, MONDAY, October 29th, 1917.

The Court was duly opened, pursuant to adjournment. Present—Their Honors: Frank A. Monroe, Chief Justice. And Olivier O. Provosty, Walter B. Sommerville, Charles A. O'Neill and Paul Leche, Associate Justices.

By the Court:

No. 22435.

THOMAS VEASEY

VS.

HENRY PETERS, EUGENE PETERS, and AETNA LIFE INSURANCE CO. OF HARTFORD, CONN.

It is ordered that the rehearing applied for in this case be Granted.

(*Final Judgment—On Rehearing.*)

(Extract from Minutes.)

NEW ORLEANS, MONDAY, February 25th, 1918.

The Court was duly opened, pursuant to adjournment. Present—Their Honors: Frank A. Monroe, Chief Justice. And Olivier O. Provosty, Walter B. Sommerville, Charles A. O'Neill, and Paul Leche, Associate Justices.

His Honor, Mr. Justice Leche, pronounced the opinion and judgment of the Court in the following case:—

No. 22435.

THOMAS VEASEY

VS.

HENRY PETERS, EUGENE PETERS, and AETNA LIFE INSURANCE CO. OF HARTFORD, CONN. (On Rehearing.)

Our former decree is set aside and it is now ordered that the judgment appealed from be affirmed at defendants' costs.

His Honor, Mr. Justice Provosty, concurs on ground that Act of Congress confers jurisdiction.

Their Honors, Mr. Justice Sommerville and Mr. Justice O'Neill, concur in decree.

40 (*Opinion Supreme Court—On Rehearing.*)

UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

NEW ORLEANS, MONDAY, February 25th, 1918.

The Court was duly opened, pursuant to adjournment.

Present—Their Honors: Frank A. Monroe, Chief Justice; Olivier O. Provosty, Walter B. Sommerville, Chas. A. O'Neill, Paul Leche, Associate Justices.

His Honor, Mr. Justice Leche, pronounced the opinion and Judgment of the Court in the following case:

41 February 25, 1918.

Supreme Court of Louisiana.

No. 22435.

THOMAS VEAZY

vs.

HENRY PETERS et als.

Appeal from the Civil District Court, Parish of Orleans. Hon. T. C. W. Ellis, Judge.

On Rehearing.

LECHE, *J.*:

Viewing the question of law upon which this case was decided, with the additional light shed upon it by reargument of counsel, we have after mature consideration, reached the conclusion that our former decree is erroneous.

That decree rests entirely upon the interpretation which we have placed upon the cases of Southern Pacific Company vs. Jensen, 244 U. S. 205, and Atlantic Transport Company vs. Imbrovek, 234 U. S. 52.

It must be observed that the statute of this State, under which plaintiff has founded his demand is not one giving redress for torts. The fundamental idea of the Employers' Liability Act is to provide means of subsistence to the employee during a specific time, when his earning capacity has been either partially or entirely destroyed, either temporarily or permanently, by injury received in the course of his employment, whether that injury be caused by his negligence, that of his fellow servant or that of his employer. The right

42 to compensation on the part of the employee does not therefore depend upon the commission of a tort towards him by his employer, and it may arise when the employer is neither negligent nor at fault. It also follows that defendants' liability, if they are liable, is purely statutory and it is neither the result of a tort nor of a contract.

In the Jensen case, libellant was endeavoring to fasten this statutory liability upon a ship which is generally subject to the admiralty jurisdiction of the United States Courts, while in the present suit plaintiff seeks to enforce liability upon a citizen of this State who is subject to the jurisdiction of its Courts and whose business is not necessarily of a maritime nature.

In the Imbrovek case, it was held that the occupation of stowing goods in the hold of a ship was maritime in its nature because on the proper performance of that duty depend in large measure the safe carrying of the cargo and the safety of the ship itself. In the present

case the occupation of plaintiff was to unload the ship and that could have no possible relation to the safety of the ship or its navigation. Nor does the decision in the Imbrovek case rest upon the question of the locality where the injury was inflicted, but on the contrary the Supreme Court seems rather to support its conclusions on the fact that in that case the employment was maritime in its nature.

It thus appears that the present suit may reasonably be distinguished from the two cases upon which we based our original opinion. But even if it be conceded that plaintiff was engaged in a maritime occupation when he was injured, since the rendition of our former decree*d* and since the Imbrovek and Jensen cases were decided by the United States Supreme Court, Congress has amended that section of the Judicial Code fixing the jurisdiction of the United States District Courts, sitting in admiralty, so as to exclude from their jurisdiction,
claims under the workmen's compensation law of any State.
43 The amended clause as adopted and approved October 6th,
1917, now reads as follows: "Third. Of all civil causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right of a common law remedy where the common law is competent to give it, and to claimants the rights and remedies under the workmen's compensation law of any State."

It thus appears that defendants are in a dilemma. If plaintiff's occupation was maritime in character, the amendment to the judicial Code saves him the proper remedy, if it is not maritime then the Imbrovek and Jensen cases do not apply to his cause of action.

Defendants in argument, suggest that retroactive effect should not be given to the above quoted paragraph of the statute, but being remedial in its nature there is nothing in the Constitution to prevent such effect from being given to it. Bass vs. Y. & M. V. R. R. Co. 136 L. 528—Morgan's L. & T. R. R. & S. S. Co. vs. Railroad Commission of La., 138 L. 377.

On the merits, the defense is that plaintiff was intoxicated at the time he was injured and that his injury was the result of such intoxication. The preponderance of evidence is against that contention and we fully agree with the District Judge in his findings.

Our former decree is set aside and it is now ordered that the judgment appealed from be affirmed at defendants' costs.

Provosty, J., concurs on ground that Act of Congress confers jurisdiction.

Sommerville and O'Neill, J. J., concur in decree.

[Endorsed:] 22435. Veazy. On rehearing.

44 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Paul E. Mortimer, Clerk of the Supreme Court of the State of Louisiana, do hereby certify that the foregoing forty-three (43) pages, contain a true transcript of certain of the proceedings had in the Civil District Court for the Parish of Orleans, in a certain suit

wherein Thomas Veasey, was plaintiff and appellee, and Henry Peters, Eugene Peters and Aetna Life Insurance Company of Hartford, Connecticut, were defendants, as per agreement of counsel to be found at page 62 of this transcript; and, also, of certain proceedings had in this Honorable Court on the appeal taken by said defendants, also as per agreement of counsel, which appeal is now on the files thereof under the No. 22435.

In testimony whereof, I hereunto sign my name and affix the seal of the Court aforesaid, at the city of New Orleans, this the 19th day of March, Anno Domini, One thousand, nine hundred and eighteen.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk Supreme Court of Louisiana.

45 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Frank A. Monroe, Chief Justice of the Supreme Court of the State of Louisiana, do hereby certify that Paul E. Mortimer is Clerk of the Supreme Court of the State of Louisiana; that the signature of Paul E. Mortimer to the foregoing certificate is in the proper handwriting of him, the said clerk; that said certificate is in due form of law, and that full faith and credit are due to all of his official acts as such.

In testimony whereof, I have hereunto set my hand and affixed the seal of the Court aforesaid, at the City of New Orleans, this the 19th day of March, Anno Domini, One thousand, nine hundred and eighteen.

[Seal Supreme Court of the State of Louisiana.]

FRANK A. MONROE,
Chief Justice Supreme Court of Louisiana.

46 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Paul E. Mortimer, Clerk of the Supreme Court of the State of Louisiana, hereby certify that the Supreme Court of the State of Louisiana is the highest Court of law in Louisiana, and that the Honorable Frank A. Monroe is the Chief Justice of said Court and that his signature to the foregoing certificate is genuine.

In witness whereof, I hereunto set my hand and affix the seal of the Court aforesaid, at the city of New Orleans, this the 19th day of March, Anno Domini, One thousand, nine hundred and eighteen.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk Supreme Court of Louisiana.

47 (*Petition for Writs of Error.*)

In the Supreme Court of the State of Louisiana.

No. 22435.

THOMAS VEASEY, Plaintiff and Appellee,

vs.

HENRY PETERS, EUGENE PETERS, and AETNA LIFE INSURANCE COMPANY, Defendants and Appellants.

To the Honorable the Supreme Court of the State of Louisiana:

The petition of Henry Peters, Eugene Peters and Aetna Life Insurance Company, defendants and appellants in the above numbered and entitled cause, respectfully shows:

(1.)

That on the 25th day of February in the year 1918, this Honorable Court rendered a decree and entered a judgment in this cause in favor of Thomas Veasey and against Henry Peters, Eugene Peters and Aetna Life Insurance Company, your petitioners, which said decree and judgment became final on the same day, to wit, the 25th day of February, 1918, for the reason that the said decree and judgment were rendered on a rehearing which had previously been granted in this matter.

(2.)

That in the said judgment and decree certain errors were committed, to the prejudice of your petitioners, all of which will appear in detail in the assignment of errors, which is filed with this petition.

48 (3.)

That in this suit plaintiff claims compensation from defendants under the Compensation Law of the State of Louisiana to wit, Act No. 20 of the General Assembly of the State of Louisiana for the year 1914.

(4.)

That plaintiff's injuries were sustained by him while he was in the employ of Henry Peters, and Eugene Peters and while he was assisting in the unloading of the Steamship Cerea then lying at the port of New Orleans in navigable waters of the United States and while he was wholly engaged in the performance of a maritime service.

(5.)

That the Compensation Act of the State of Louisiana has no application to the facts of this case for the reason that the injury was one

with respect to which Congress may establish and has established a rule of liability; and for the further reason that the said Compensation Act of the State of Louisiana, if applied to the facts of this case, controvenes the Constitution and laws of the United States as it constitutes the regulation of a burden upon interstate commerce in violation of Article 1, Section 8 of the Constitution of the United States; and for the further reason that it takes, or attempts to take property without due process of law, in violation of the 14th Amendment of the Constitution of the United States; and for the further reason that it denies petitioners the equal protection of the laws, in violation of the 14th Amendment of the Constitution of the United States; and for the further reason that it violates Article 3, Section 2 of the Constitution, conferring admiralty jurisdiction upon the Courts of the United States; and for the further reason that it violates Section 9 of the Judicial Code of 1789, 1 Stat. 76 & 77, wherein the District Courts of the United States were given "exclusive original cognizance of all Civil causes of admiralty and maritime jurisdiction, * * * saving to suitors in all cases the right of a Common Law remedy, where the Common Law is competent to give it" which provisions of the said Judiciary
49 Code have been continued, and are now contained in Judicial Codes, Sections 24 and 256.

(6.)

That in this case the validity of the Statute of the State of Louisiana to wit, Act No. 20 of the General Assembly of the State of Louisiana for the year 1914, is drawn in question on the ground that it is repugnant, if applied to the facts of this case, to the Constitution of the United States and the amendments thereto, and the laws of the United States as set forth in the preceding paragraph of this petition, and that in this case and in the decree and judgment, this Court has decided that the said Statute of Louisiana is applicable to the facts of this case, and has decided in favor of the validity of said statute.

(7.)

That Federal questions, to wit, the questions set forth in the two preceding paragraphs, were properly and timely raised in this Court, and were considered and passed upon by this Court in its said opinion and decree of February 25th, 1918.

(8.)

That this Court is the Court of last resort in the State of Louisiana, and that the opinion and decree rendered on February 25th, 1918, are final.

(9.)

That in rendering the said opinion and decree this Court denied to your petitioners certain rights, privileges and immunities to which

your petitioners are entitled under the Constitution of the United States.

(10.)

That petitioners desire a writ of error from the said decree and judgment of this Honorable Court to the Honorable the Supreme Court of the United States.

50 Wherefore, petitioners pray that a writ of error, to operate as a supersedeas, may issue in this behalf to the Honorable the Supreme Court of the United States to the end that the said Supreme Court of the United States may review and correct the said errors so contained; that a transcript of the record of the proceedings and papers in this case, or so much thereof as may be necessary, duly authenticated may be sent to the said Supreme Court of the United States, and that pending said writ of error, a writ of injunction may be issued and maintained and continued in force.

WM. C. DUFOUR,
ARTHUR A. MORENO,
GEORGE JANVIER,
I. S. HELLER,
Attorneys for Petitioners.

51 *Verification.*

STATE OF LOUISIANA,
Parish of Orleans:

George Janvier, being duly sworn, deposes and says that he is of counsel for Henry Peters, Eugene Peters and the Aetna Life Insurance Company, petitioners herein, that it is impracticable to have this verification made by the petitioners in person, that the affiant has read the foregoing petition, and that all the allegations thereof are true and correct to the best of his knowledge and belief.

GEORGE JANVIER.

Sworn to and subscribed before me this 7th of March, 1918.

[SEAL.] THOS. E. FURLOW,
Notary Public.

52 *Order Allowing Writ of Error.*

Considering the foregoing petition, verification and assignment of errors, it is ordered that a writ of error be and it is granted unto Henry Peters, Eugene Peters and the Aetna Life Insurance Company, the petitioners herein to the Honorable the Supreme Court of the United States, upon their furnishing bond with good and solvent security, and done according to law in the sum of $5,000.00 dollars.

Pending said writ of error let a writ of injunction issue herein and

be maintained and continued in force, until the final determination of this matter.

New Orleans, March 7, 1918.

[Seal Supreme Court of the State of Louisiana.]

FRANK A. MONROE,
Chief Justice of the Supreme Court of the State of Louisiana.

52½ [Endorsed:] No. 22435. Supreme Court of the State of Louisiana. Thomas Veasey versus Henry Peters et als. Petition for Writ of Error. Filed March 7th 1918. Percy J. Heines, Deputy Clerk. Dufour & Janvier, Attorneys-at-Law. Arthur A. Moreno.

53 (*Assignment of Errors.*)

In the Supreme Court of the State of Louisiana.

No. 22435.

THOMAS VEASEY, Plaintiff and Appellee,

vs.

HENRY PETERS, EUGENE PETERS, and AETNA LIFE INSURANCE COMPANY, Defendants and Appellants.

Assignment of Errors.

* * * * * * *

Henry Peters, Eugene Peters and Aetna Life Insurance Company, Defendants and Appellants in connection with their petition for a writ of error herein, make the following assignment of errors, which they aver are to be found in the opinion, judgment and decree of this Honorable Court in this matter:

(1.)

That this Court erred in holding that the Compensation Act of the State of Louisiana, to wit, Act No. 20 of the General Assembly of the State of Louisiana for the year 1914, is applicable to the facts of this case, for the reason that the said act, if applicable to the facts of this case, is violative of the Constitution and laws of the United States.

(2.)

That this Court erred in maintaining the validity of act No. 20 of the General Assembly of the State of Louisiana for the year 1914.

(3.)

That this Court erred in holding that the case of the South-
54 ern Pacific Company vs. Jensen, 244 United States 207, is distinguishable from this case.

(4.)

That this Court erred in giving retroactive effect to the Amendment of the Judicial Code of the United States adopted by Congress of the United States on October 6th, 1917, reading as follows: "3rd. Of all Civil causes of admiralty and maritime jurisdiction saving to suitors in all cases the right of a Common Law remedy, where the Common Law is competent to give it, and to claimants the rights and remedies under the Workmen's Compensation Law of any State".

(5.)

That this Court erred in holding that the work in which plaintiff was engaged, the unloading of cargo from a ship lying in navigable waters of the United States, is not maritime in its nature and is not cognizable in admiralty.

(6.)

That this Court erred in not holding that plaintiff being engaged in a maritime employment and sustaining injuries in the course thereof on a ship lying in navigable waters of the United States could not recover against his employer under the Compensation Law of Louisiana, and in not holding that the remedy which the compensation statute attempts to give is of a character wholly unknown to the Common Law, incapable of enforcement by ordinary processes of any Court and is not saved to suitors from the grant of exclusive jurisdiction.

(7.)

That this Court erred in not maintaining the exception of no cause of action in compensation and in not dismissing plaintiff's suit.

(8.)

The petitioners assign other errors patent upon the face of the record.

55 Wherefore, petitioners pray that the decree of the Supreme Court of Louisiana, herein and in these particulars complained of, may be reversed and that petitioners may have an adjudication and decree in their favor.

WM. C. DUFOUR,
ARTHUR A. MORENO,
GEORGE JANVIER,
I. S. HELLER,
Attorneys for Petitioners.

55½ [Endorsed:] No. 22435. Supreme Court of the State of Louisiana. Thomas Veasey versus Henry Peters et als. Assignment of Errors. Filed March 7th 1918. Percy J. Heines, Deputy Clerk. Dufour & Janvier, Attorneys-at-Law. Arthur A. Moreno.

56 (*Bond for Writ of Error—Copy of.*)

In the Supreme Court of the State of Louisiana.

No. 22435.

THOMAS VEASEY, Plaintiff and Appellee,

vs.

HENRY PETERS, EUGENE PETERS, and AETNA LIFE INSURANCE COMPANY, Defendants and Appellants.

Bond of Henry Peters, Eugene Peters, and Aetna Life Insurance Company, Plaintiffs in Error.

Know all men by these presents: that we, Henry Peters, Eugene Peters and Aetna Life Insurance Company as principals, and National Surety Company, as Surety, are jointly and severally held and firmly bound unto Thomas Veasey of New Orleans, Louisiana, in the sum of Five Thousand and No Dollars ($5,000.00) to be paid to the said Thomas Veasey, to which payment, well and truly to be made, we bind ourselves jointly and severally and in solido firmly by these presents, sealed with our seals and dated this 7th day of March, 1918.

57 Whereas, the said Henry Peters, Eugene Peters and the Aetna Life Insurance Company, plaintiffs in error, seek to prosecute their writ of error to the United States Supreme Court, to reverse the judgment rendered in the above entitled action by the Supreme Court of Louisiana.

Now therefore, the condition of this obligation is such that if the said plaintiffs in error shall prosecute their said writ of error to effect, and answer all costs and damages that may be adjudged if they shall fail to make good their plea, then this obligation to be void, otherwise to remain in full force and effect.

HENRY PETERS, EUGENE PETERS, AND AETNA LIFE INSURANCE COMPANY,

(Signed) By GEORGE JANVIER,
(") WM. C. DUFOUR,
(") ARTHUR A. MORENO,
(") ISAAC S. HELLER,
(") NATIONAL SURETY COMPANY,
(") By S. ROYDEN FANNING,
(Res. Vice-President. [SEAL.]
(") LOUIS COUSIN,
Res. Ass't Secretary.

March 7, 1918.

Approved by
[SEAL.] (Signed) FRANK A. MONROE,
Chief Justice Supreme Court of Louisiana.

(Endorsed:) No. 22435. Supreme Court of the State of Louisiana. Henry Peters, Eugene Peters and Aetna Life Insurance Co., Plaintiffs-in-error, vs. Thomas Veasey, Defendant-in-error. Bond for Writ of Error. Filed March 7th, 1918. (Signed) Percy J. Heines, Deputy Clerk.

58 (*Original Writ of Error.*)

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of Louisiana before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Thomas Veasey, Plaintiff and Appellee and Henry Peters, Eugene Peters and Aetna Life Insurance Company, Defendants and Appellants wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of the clause of the Constitution, or
59 of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Henry Peters, Eugene Peters and Aetna Life Insurance Company as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable, Edward Douglass White, Chief Justice of the Supreme Court of the United States, the 7th day of March, in the year of our Lord one thousand nine hundred and Eighteen.

[Seal District Court of the United States for the Eastern District of Louisiana.]

H. J. CARTER,
Clerk of the District Court of the United States for the Eastern District of Louisiana.

[Seal Supreme Court of the State of Louisiana.]

Allowed by
FRANK A. MONROE,
Chief Justice of the
Supreme Court of Louisiana.

March 7th, 1918.

[Endorsed:] No. 22435. Henry Peters, Eugene Peters and Aetna Life Insurance Company, Plaintiffs in Error, versus Thomas Veasey, Defendant in Error. Writ of Error. Supreme Court of Louisiana. Filed Mar. 7th 1918. Percy J. Heines, Deputy Clerk.

60 (*Certificate of Lodgment.*)

UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Paul E. Mortimer, Clerk of the Supreme Court of the State of Louisiana, do hereby certify that there was lodged with me as such Clerk on March 7th, 1918, in the cause entitled Henry Peters, Eugene Peters and Aetna Life Insurance Company of Hartford, Connecticut, Plaintiffs-in-error, vs. Thomas Veasey, Defendant-in-error:—

First. The original petition for writ of error, as herein set forth.
Second. The original assignment of errors, as herein set forth.
Third. The original bond for writ of error, a copy of which is herein set forth.
Fourth. The original writ of error, as herein set forth.
Fifth. Two copies of the writ of error; one copy to be served on defendant-in-error, and one copy to be lodged in my office.

In witness whereof, I hereunto sign my name and affix the seal of the Court aforesaid, at the city of New Orleans, this the 19th day of March, Anno Domini, One thousand, nine hundred and eighteen.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk Supreme Court of Louisiana.

61 THE UNITED STATES OF AMERICA,
Supreme Court of the State of Louisiana:

The President of the United States to Thomas Veasey, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the City of Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the State of Louisiana, at New Orleans, wherein Henry Peters, Eugene Peters and Aetna Life Insurance Company are Plaintiffs in Error and You,

Thomas Veasey are Defendant in Error, to show cause, if any there be, why the judgment rendered against the said Henry Peters, Eugene Peters and Aetna Life Insurance Company as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward Douglass White, Chief Justice of the Supreme Court of the United States, this 7th day of March in the year of our Lord one thousand nine hundred and Eighteen.

[Seal Supreme Court of the State of Louisiana.]

FRANK A. MONROE,
Chief Justice of the Supreme Court
of the State of Louisiana.

[Endorsed:] Supreme Court of the State of Louisiana. No. 22435. Henry Peters, Eugene Peters and Aetna Life Insurance Co., Plaintiffs in Error, vs. Thomas Veasey, Defendant in Error. Citation. Sheriff's. Filed Mch. 7, 1918. Paul E. Mortimer, clerk. Service accepted, all rights reserved. Howell Carter, Jr., of counsel for defendant in error. Mar. 8, 1918.

62 (*Agreement of Counsel as to Preparation of Record.*)

Supreme Court of the United States.

HENRY PETERS, EUGENE PETERS, and AETNA LIFE INSURANCE COMPANY, Plaintiffs in Error,

vs.

THOMAS VEASEY, Defendant in Error.

Agreement of Counsel as to Preparation of Printed Record.

It is hereby agreed by and between counsel representing all parties in interest in this matter, that the following evidence, pleadings and written documents shall be and form the transcript in the writ of error and appeal herein, and shall form the record for this Court.

1.

Petition of plaintiff together with verification and order thereon.

2.

Answer of defendants together with verification thereon.

3.

Testimony of Thomas Veasey.

4.

It is agreed that Henry and Eugene Peters are stevedores residing in the City of New Orleans; that Thomas Veasey is also a resident of

the said City, and together with others was employed by the Peters to do such work as they, Henry and Eugene Peters, would contract for. The contract by which Veasey was employed was made in the City of New Orleans.

At the time of the accident, out of which this suit has arisen, Henry and Eugene Peters were under contract to unload the
63 Steamship Cerea, then lying at the wharf in New Orleans, in navigable waters of the United States, and Veasey and others were told to do this work. Veasey was injured while doing this work on board the said vessel.

Under the law of Louisiana, the employers were under obligation to pay their employees compensation for injuries received while so employed by them, and to secure themselves against claims of this character, Henry and Eugene Peters had obtained from the Aetna Life Insurance Company a policy of insurance by which the Company bound itself to pay all claims for compensation made by employees of the assured and covered by the law of Louisiana on the subject, namely, Act No. 20 of 1914.

5.

Reasons of Trial Court for judgment.

6.

Judgment of Trial Court.

7.

Motion for appeal.

8.

Answer to appeal.

9.

Exception of Henry Peters, Eugene Peters, and the Aetna Life Insurance Company filed in the Supreme Court of Louisiana.

10.

Opinion and decree of the Supreme Court of Louisiana on original hearing.

11.

Order of Supreme Court of Louisiana granting rehearing.

12.

Opinion and decree of the Supreme Court of Louisiana on rehearing.

13.

Petition for writ of error together with verification and order thereon.

64 14.

Bond for writ of error together with approval of Chief Justice of Supreme Court of Louisiana thereon.

15.

Writ of error.

16.

Citation together with acceptance of service thereon endorsed.

17.

This agreement as to preparation of the transcript.

It is further agreed that if any other portion of the transcript or record is required by either party, then the same can be filed in the United States Supreme Court, without objections from either party, or parties.

WM. C. DUFOUR,
A. A. MORENO,
GEORGE JANVIER,
I. S. HELLER,
Attorneys for Henry Peters, Eugene Peters, and Aetna Life Insurance Co., Plaintiffs in Error.
SOLOMON WOLFF,
E. M. STAFFORD,
F. B. FREELAND,
HOWELL CARTER, JR.,
Attorneys for Thomas Veasey, Defendant in Error.

64½ [Endorsed:] No. 22435. Supreme Court of the United States. Henry Peters, Eugene Peters and Aetna Life Ins. Co., Plaintiffs in Error, versus Thomas Veasey, Defendant in Error. Agreement of Counsel as to Preparation of Record. Solomon Wolff, E. M. Stafford, F. B. Freeland, Howell Carter, Jr., Attorney- for Defendant in Error. W. C. Dufour, A. A. Moreno, George Janvier, I. S. Heller, Attorney- for Plaintiffs in Error. Dufour & Janvier, Attorneys-at-Law. Filed March 15th 1918. Percy J. Heines, Dep. Clerk.

65 (*Return to Writ.*)

UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified tran-

script of certain of the proceedings had in the within entitled case, together with all things concerning the same, as per agreement of counsel at page 62 of this transcript.

In witness whereof, I hereunto sign my name and affix the seal of the Court aforesaid, at the city of New Orleans, this the 19th day of March, Anno Domini, One thousand, nine hundred and eighteen.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk Supreme Court of Louisiana.

66 (*Statement of Costs.*)

Costs paid by Defendant in Civil District Court.....	$35.10
Costs paid by Defendant for filing transcript of appeal in Supreme Court	$25.00
Costs paid by Plaintiffs-in-error, for making transcript of record to the Supreme Court of the United States.....	$30.00
Total.....	$90.10

Endorsed on cover: File No. 26,420. Louisiana Supreme Court. Term No. 401. Henry Peters, Eugene Peters, and Aetna Life Insurance Company, plaintiffs in error, vs. Thomas Veasey. Filed April 5th, 1918. File No. 26,420.

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Statement of the Case 1

Point 1.—The remedy of the Louisiana Workmen's Compensation Act (it provides compensation upon a prescribed scale for injuries and deaths of employees, without regard to fault) is a remedy unknown to the Common Law and incapable of enforcement by the ordinary processes of any Court, and hence, prior to the amendment of October 6, 1917, to the Judicial Code, was not among the common law remedies which are saved to suitors from the exclusive admiralty jurisdiction by Judiciary Act of 1879, section 9; Judicial Code, sections 24, 256 3

Point II.—Work performed by a stevedore on board a ship in unloading her at a wharf in navigable waters is maritime; his employment for such work and injuries suffered in it are likewise maritime and the rights and liabilities arising from such work, employment and injuries are clearly within the admiralty jurisdiction 5

Point III.—If a cause is maritime in nature admiralty is not deprived of the jurisdiction by the fact that the suit is one in *personam* and not in *rem* 6

Point IV.—The amendment adopted October 6, 1917, to sections 24 and 256 of the Judicial Code is not retroactive 8

Point V.—The writ of error was properly granted for the reason that the validity of a statute of a State challenged because of repugnance to the Constitution, treaties and laws of the United States was upheld 11

Point VI.—An exception aimed at a total lack of a cause of action may be filed at any stage of the proceedings; even in the State Supreme Court.. 12

LIST OF CASES CITED.

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Supreme Court of the United States

OCTOBER TERM, 1919.

No. 77.

HENRY PETERS, EUGENE PETERS and AETNA LIFE INSURANCE COMPANY, *Plaintiffs in Error,* *vs.* THOMAS VEASEY, *Defendant in Error,*	*In Error to the Supreme Court of the State of Louisiana.*

Brief of Plaintiffs in Error.

STATEMENT OF THE CASE.

The undisputed facts are that Henry and Eugene Peters are stevedores engaged in the securing of contracts and the execution of contracts for the loading and unloading of vessels at the port of New Orleans.

Aetna Life Insurance Company issued to them a policy of liability and workmen's compensation insurance.

Thomas Veasey was a longshoreman or laborer employed by Henry and Eugene Peters in the unloading of the steamship "Seria" lying at the wharf in New Orleans. The steamship "Seria" at the time Thomas Veasey sustained his injuries was lying in navigable waters of the United States.

On August 6, 1915, Thomas Veasey while in the employ of Henry and Eugene Peters and while engaged in the unloading of the said steamship fell down one of the hatches and was seriously injured.

Suit was filed under Act No. 20 of the General Assembly of Louisiana for 1914, (the Workmen's Compensation Law). The Trial Court rendered judgment for the claimant and appeal was had to the Supreme Court of the State of Louisiana. In that Court an exception of no cause or right of action was filed which exception was based on the decision of this Court in the case of *Southern Pacific Company v. Jensen*, 241 *U S.* 205. The position assumed on behalf of the exceptors being that the Workmen's Compensation Law of Louisiana was unconstitutional insofar as it interfered with the exclusive jurisdiction of the Admiralty Courts of the United States, and insofar as it sought to grant and enforce a remedy unknown to the Admiralty Law. This exception was sustained and the suit ordered dismissed.

On application of Thomas Veasey a rehearing was granted and on the rehearing the former opinion was recalled and the judgment of the trial Court was affirmed.

REASONS OF SUPREME COURT OF THE STATE.

The Supreme Court of Louisiana based its decision on its opinion that the *Jensen case* and the case of *Atlantic Transport Company v. Imbrovek*, 234 *U. S.* 52, could be distinguished from the instant case in the following particulars:

(1) That the loading of a ship is a maritime employment while the unloading is not.

(2) That the amendment to sections 24 and 256 of the Judicial Code adopted October 6, 1917, is retroactive, and that although the Workmen's Compensation Law of Louisiana may have been unconstitutional insofar as it interfered with the exclusive jurisdiction of the Admiralty Courts prior to the adoption of the said amendment, that this unconstitutionality was cured by the amendment and that plaintiff's right to recover in compensation, although prior to the amendment it may not have existed, was retroactively brought into being by the adoption of the said amendment.

ARGUMENT.

POINT I.

The remedy of the Louisiana Workmen's Compensation Act (it provides compensation upon a prescribed scale for injuries and deaths of employees, without regard to fault) is a remedy unknown to the common law and incapable of enforcement by the ordinary processes of any Court, and hence, prior to the amendment of Octo-

ber 6, 1917, to the Judicial Code, was not among the common law remedies which are saved to suitors from the exclusive admiralty jurisdiction by judiciary act of 1879, Section 9; Judicial Code, Sections 24, 256.

This point has been so clearly settled by the decision of this Court in *Southern Pacific Company v. Jensen*, 244 *U. S.* 207, that we deem it unnecessary to in any way argue the legal phase of the question. We shall merely undertake to show that the Louisiana Compensation Law is practically identical with the New York Compensation Law which in the *Jensen case* this Court held was violative of the Constitution in the situation presented.

The Louisiana Compensation Law provides a definite scale of compensation regardless of the negligence of the injured or killed employee. This is identically the provision made by the New York Compensation Law. In fact the words in the syllabus of the *Jensen case* descriptive of the method adopted by the New York Compensation Law are likewise and with equal correctness descriptive of the method adopted by the Louisiana Compensation Law. This wording follows:

> "It provides compensation upon a prescribed scale for injuries and deaths of employees, **without regard to fault.**" (Black letters ours.)

It is this provision that the compensation shall be paid without regard to fault which renders the remedy one unknown to common law and unknown to admiralty and which makes the Workmen's Compensation Laws of any of

the states unconstitutional insofar as injuries sustained in maritime occupations are concerned.

The *Jensen case* then cannot be distinguished from the instant case on any difference between the Louisiana act and the New York act.

POINT II.

Work performed by a stevedore on board a ship unloading at a wharf in navigable waters is maritime; his employment for such work and injuries suffered in it are likewise maritime and the rights and liabilities arising from such work, employment and injuries are clearly within the admiralty jurisdiction.

The Supreme Court of Louisiana attempted to distinguish the *Jensen case* from the instant case because in our brief filed in that Court we had cited the *Imbrovek case* in which case the work which was being performed was the loading of the vessel. The Court held that there was a distinction between the loading and the unloading—one being maritime—the other not. This distinction by the Court apparently overlooks entirely the *Jensen case* itself in which case Jensen the employee, who was killed, was actually engaged in the **unloading** of the vessel.

Furthermore, it appears to us impossible to distinguish the loading from the unloading so far as the maritime nature of the work and the danger to the ship are concerned. This Court will undoubtedly take judicial notice of the many cases in which vessels have been improperly unloaded

which resulted in listing of the vessel in several cases to such an extent as to cause their complete filling and sinking.

But to revert to the *Jensen case* the point has already been settled in that case and it was apparently through an oversight of the State Supreme Court and through failure to carefully read the *Jensen case* that they thought they saw a distinction.

POINT III.

If a cause is maritime in nature admiralty is not deprived of the jurisdiction by the fact that the suit is one in *personam* and not in *rem*.

It was argued in the State Supreme Court that the *Jensen case* could be distinguished from the instant case in that in the *Jensen case* the suit was one against the vessel itself whereas in the instant case if brought in admiralty it would necessarily have been brought in *personam* against the employers of the injured party. That this distinction does not deprive the Admiralty Courts of jurisdiction has been held by this Court in *New Jersey Steam Navigation Company v. Merchants Bank*, 6 *Howard* 344, and in *Atlantic Transport Company v. Imbrovek, Supra*, in which latter case the facts as stated by the Court were:

> "This is a libel to recover for personal injuries sustained by the libellant as a stevedore in the employ of the Atlantic Transport Company (the petitioner) which was engaged in loading the Pretoria belonging to the Hamburg-American Steam Packet Company while lying in the port of Baltimore. The

libel was brought against both the owner of the ship and the stevedore company. It was dismissed as to the former, but a recovery against the latter was allowed by the District Court and sustained by the Circuit Court of Appeals."

In that case this Court said:

"Admiralty has jurisdiction of a suit in *personam* by an employee of a stevedore against the employer to recover for injuries sustained through the negligence of the latter while engaged in loading a vessel lying at the dock in navigable waters.

"A tort committed on a vessel in connection with a service thereto may be maritime even if there is no fault on the part of, or injury to, the ship itself."

And again:

"The petitioner contends that a maritime tort is one arising out of an injury to a person by the negligence of a ship or a person or out of an injury to a person by the negligence of a ship; that there must either be an injury to a ship or an injury by the negligence of a ship, including therein the negligence of her owners or mariners; and that, as there was no negligence of the ship in the present case the tort was not maritime. This view we deem to be altogether too narrow."

See also *Chelentis v. Luckenbach Steamship Company*, 247 *U. S.* 372.

There is then no distinction between the *Jensen case* and the instant case in the fact that the one was a libel in *rem* against the vessel and the other should have been a libel in *personam* against the employers.

POINT IV.

The amendment adopted October 6, 1917, to Sections 24 and 256 of the Judicial Code is not retroactive.

The one remaining distinction made by the Supreme Court of Louisiana between the *Jensen case* and the instant case and the one remaining hope to which Veasey clings is the fact that after the happening of the accident in the instant case and prior to the final decision the amendment to Sections 24 and 256 of the Federal Judicial Code was adopted and it is contended that this amendment,

> "Saving to suitors—and to claimants the rights and remedies under the Workmen's Compensation Law of any State."

saves Veasey from a fate similar to that of the claimant in the *Jensen case*. The Supreme Court of Louisiana held that this amendment was remedial by nature and was retroactive.

The decisions cited by Veasey and on which the Supreme Court of Louisiana based its opinion on this point are *Bass v. Y. & M. V. Railroad Company*, 136 *La.* 528 *and M. L. & T. R. R. & S. S. Company v. Railroad Commission of Louisiana*, 138 *La* 377. In both of these cases the statute which was given retroactive effect affected simply the method of procedure and in neither of them was a substantive right interfered with.

That the right conferred under the admiralty law is a substantive right and not a mere matter of remedy was

squarely decided by this Court in *Chelentis v. Luckenbach Steamship Company* (*supra*), wherein the Court said:

> "The distinction between rights and remedies is fundamental. A right is a well founded or acknowledged claim; a remedy is the means employed to enforce a right or redress an injury. Bouvier's Law Dictionary. Plainly, we think, under the saving clause a right sanctioned by the maritime law may be enforced through any appropriate remedy recognized at common law; but we find nothing therein which reveals an intention to give the complaining party an election to determine whether the defendant's liability shall be measured by common law standards rather than those of the maritime law. Under the circumstances here presented, without regard to the Court where he might ask relief, petitioner's rights were those recognized by the law of the sea."

The law of Louisana on this point follows the general law and particularly the rulings of this Court. This Court has held in *Auffmordt v. Rasin*, 102 *U. S.* 620:

> "A statute will be construed as perspective and operating in future only, unless the intention of the Legislature to give it a retroactive effect is expressed in language too clear and explicit to admit of a reasonable doubt."

The Supreme Court of Louisiana has said:

> "It is a sound rule of construction never to consider laws as applicable to cases arising before their passage, unless the Legislature have, in terms, declared such to be their intention."
>
> *McGeehan v. Burke*, 37 *La. Annual*, 156.

In fact the Civil Code of Louisiana on which all Louisiana law is based provides in Article 8:

> "LAW PROSPECTIVE. A law can prescribe only for the future; it can have no retrospective operation, nor can it impair the obligation of contracts."

The Circuit Court of Appeals for the Fifth Circuit has held:

> "ACT 68 of 1902 which provides that damages to wife shall be her separate property, cannot have any effect where the accident for which damages are claimed accrued before the passage of the Act."
> *St. Louis & S. W. R. R. Co. v. Purcell,* 135 *Federal* 499.

So that the Louisiana Courts, the Federal Courts sitting in Louisiana and this Court all hold that retroactive effect should not be given to a statute where to do so would interfere with substantive rights previously acquired for to do so would be to deprive the owner of the rights of his property without due process of law.

In the instant case the parties made a contract of employment; the law of the State and of the United States attached certain conditions to that contract. One of the conditions was that if the employee was injured by the negligence of the employer he should recover damages but that if he were injured not by the negligence of the employer he should not recover damages from the employer. The parties commenced operations under the terms of the contract and an injury occurred. There was no negligence of the employer. Therefore there was

no right to recover against employer in the employee. At this stage of the proceedings the amendment was adopted. To hold that this amendment can retroactively go into effect and bring into being a right in the employee to recover damages from the employer irrespective of the fact that the employer was in no way at fault is to interfere with the operation of a contract, to destroy a vested right and to take from the employer his property without due process of law.

In fact to give to this statute in this case retroactive effect is to give to the employee his employer's money by Legislative act. It is impossible to believe that retroactive effect can be given to this statute.

This identical point was considered in the case of *Coon v. Kennedy*, 103 *Atl.* 207, and the Court held that retroactive effect could not be given to the amendment saving to claimants the right to sue in compensation and this Court refused to consider the question in *Coon v. Kennedy*, 248 *U. S.* 457.

POINT V.

The writ of error was properly granted for the reason that the validity of a statute of a state challenged because of repugnance to the Constitution, treaties and laws of the United States was upheld.

This point needs no argument. The constitutionality of the Workmen's Compensation Law of Louisiana was attacked; the decision of the Supreme Court of the State was

in favor of the constitutionality of the law and therefore the writ of error was properly granted and the matter should be considered by this Court.

POINT VI.

An exception aimed at a total lack of a cause of action may be filed at any stage of the proceedings; even in the State Supreme Court.

No extended argument need be made on this point. The claimant scarcely contested the right to file this exception in the Supreme Court of the State and that Court in its decision upheld this right.

> "A total lack of a cause of action may be taken advantage of by exception at any stage of the proceeding, even in the Supreme Court."
>
> *Henry Peters, et al, v. Thomas Veasey,* 142 *La.*, 1012.
> *Brown v. Saul,* 4th *Martin* (*N. S.*) 434.
> *Union Bank v. Dunn,* 17 *La.* 234.
> *Lacasse v. N. O. T. & M. R. R. Co.,* 133 *La.* 129.

We respectfully submit that the decision of the Supreme Court of Louisiana is erroneous; that the amendment to the Judicial Code is not retroactive; that the Workmen's Compensation Law of Louisiana is inapplicable to the facts of this case and, so far as the law attempts to interfere with the exclusive jurisdiction of the Admiralty Courts and the

exclusive remedy known to those courts, is unconstitutional and that the suit of Veasey in compensation should be ordered dismissed.

Respectfully submitted,

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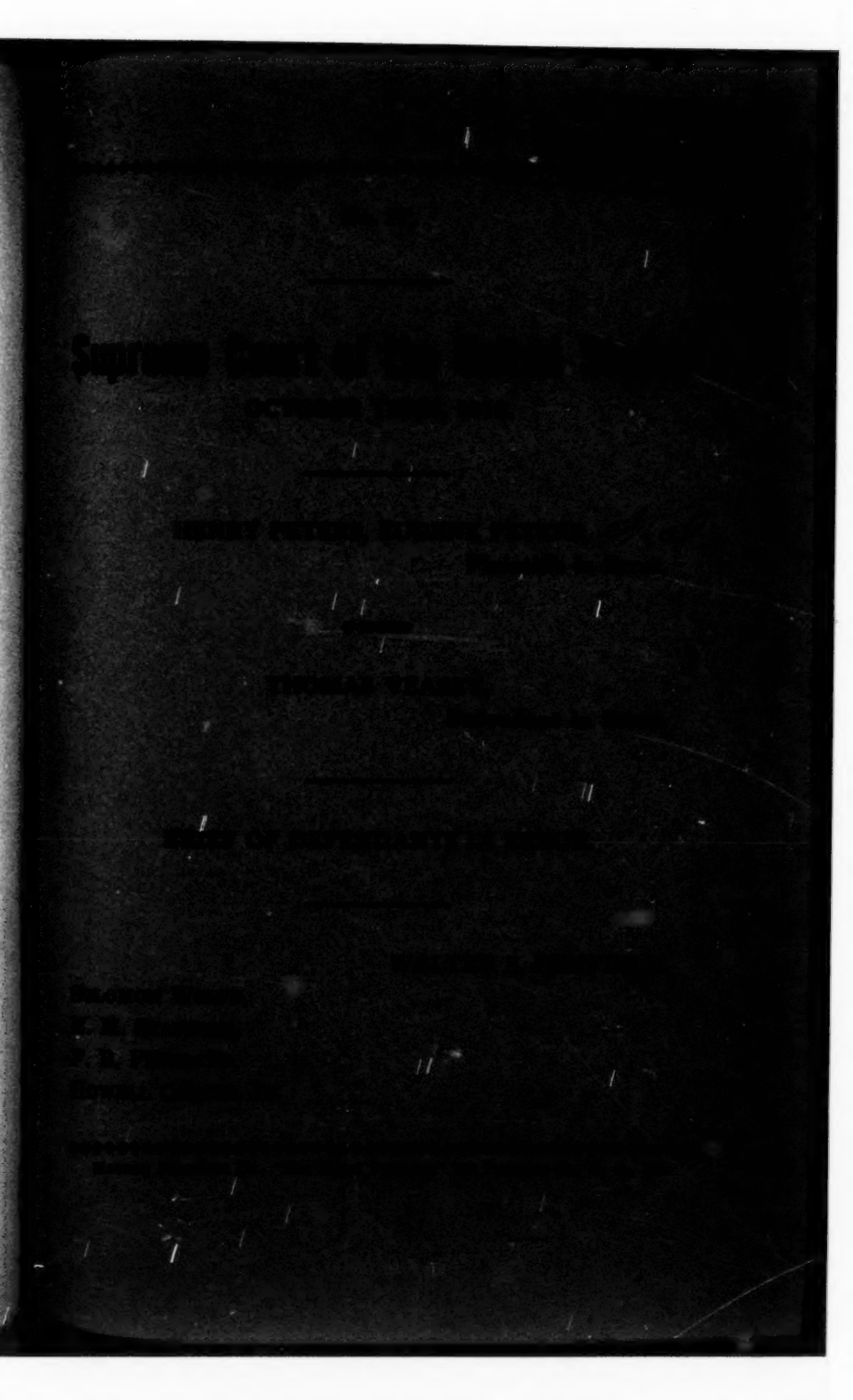

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No. 77.

Supreme Court of the United States

OCTOBER TERM, 1919.

HENRY PETERS, EUGENE PETERS, et. al.
Plaintiffs in Error,

versus

THOMAS VEASEY,
Defendant in Error.

BRIEF OF DEFENDANTS IN ERROR.

SYLLABUS.

To Paragraph I of Brief, p. 5.

Where a resident of New Orleans employs another resident **to do such work as the employer may contract to do,** the contract of employment is not necessarily maritime in its nature, since the employee may be ordered and would be bound to perform any labor.

Nor is this ordinary and non-maritime contract of employment converted into a maritime contract because some of the work which the employee is ordered to do is the loading of a vessel.

The character of the contract of employment is not controlled by the **place** where some of the work may at times be done, thus it could not be said that a jeweler who sends his employee on board a vessel to repair a clock makes the character of the contract of employment between the jeweler and his employee a maritime contract.

To Paragraph II of Brief, p. 8.

Even if a contract of employment be maritime in its nature, yet where in addition to this contract of employment the parties make another contract, having some relation to theother, but still entirely independent of the other and merely collateral to it, the latter contract is not maritime unless it is so independently of the first contract to which it is related.

A contractual obligation entered into for proper consideration to compensate an employee if he should sustain injuries in the performance of a certain contract of employment is merely collateral to the latter, and whatever the jurisdiction of admiralty courts as to the contract of employment, they are without jurisdiction of the contract for compensation.

To Paragraph III of Brief, p. 10.

More especially true is this where the contract for compensation is made by another than the employer.

In the instant case the Aetna Insurance Company agreed to pay the employee compensation if he was injured, and the only question was: Was the employee injured while employed by the Peters. The character and nature of the employment do not concern the insurance company.

To Paragraph IV of Brief, p. 11.

A Court, though not seized of jurisdiction, when a given suit is filed, becomes seized with jurisdiction thereof, if while the suit is pending the jurisdiction is enlarged.

So here assume that the courts of Louisiana were without jurisdiction when the instant suit was filed, yet if while the suit was pending the courts are given jurisdiction by some amendment of the law the case may properly be decided.

In "agreement of counsel as to preparation of record" (Tr. p. 38) it is stated, paragraph 4:

> "It is agreed that Henry and Eugene Peters are stevedores, residing in the city of New Orleans; that Thomas Veasey is also a resident of the said city, **and together with others was employed by the Peters to do such work as they, Henry and Eugene Peters, would contract for.** The contract by which Veasey was employed was made in the city of New Orleans at the time of the accident, out of which this suit has arisen. Henry and Eugene Peters were under contract to unload the steamship Cerea, then lying at the wharf in New Orleans, in navigable waters of the United States, **and Veasey and others were told to do this work.** Veasey was injured while doing this work on board the said vessel.
>
> **"Under the law of Louisiana the employers were under obligation to pay their employees compensation for injuries received while so employed** by them, and to secure themselves against claims of

> this character. Henry and Eugene Peters had obtained from the Aetna Life Insurance Company a policy of insurance by which the company bound itself to pay **all claims for compensation made by employees of the assured and covered by the law of Louisiana on the subject**—namely, Act No. 20 of 1914. (Writer's black letters.)

It thus appears that Veasey was injured on board a vessel, and while unloading it; that the vessel was lying at the wharf in the port of New Orleans (State of Louisiana). The amount involved—$6.25 a week for 300 weeks. Judgment of trial Court (Tr. p. 16) affirmed on appeal by the Supreme Court of Louisiana (Tr. p. 28)—is not before this Court.

The issues here are:

FIRST. Was the character of Veasey's employment maritime in its nature.

SECOND. If it was maritime, are the defendants, Henry and Eugene Peters, released under the facts in the instant case?

THIRD. Assuming the character of the employment to have been maritime, is the plaintiff in error—the Ætna Life Insurance Company—released?

FOURTH. Assuming the contract of employment to have been maritime and the courts of the State of Louisiana without jurisdiction at the time the cause of action arose, did not the change in the judicial code in 1917 vest jurisdiction to hear a pending case.

ARGUMENT.

I

The Character of the Employment.

"The defendant in error, together with others, was employed by the Peters to do such work as they, Henry and Eugene Peters, would contract for." (Tr. p. 38, paragraph 4.)

If Henry and Eugene Peters contracted to build a house, or pave a street, or take cotton out of a warehouse, Veasey was obliged to do the work, for was he not employed to do the work for which the Peters would contract?

The contract of employment was therefore not maritime; the contract was for the performance of any work, whether maritime or otherwise, which the Peters would contract to perform. As it happened, Veasey on that particular day was assigned to work on a vessel; he might easily have been assigned to load the cotton on the trucks or drays at the warehouse. We are not concerned with the character of the work which was being done at the moment; we are concerned solely with the fact—was the contract of employment itself a maritime contract, as when one employs an engineer to run a vessel, and for no other purpose, or when one makes any one of a number of other contracts strictly maritime in their nature. But surely the employment of a resident of New Orleans by another resident of New Orleans to do such work as the employer may undertake is not a maritime contract, nor is a contract not maritime in its nature converted into one because some of the work which the employer undertook to do was to load a vessel.

A contract by which a stevedore employed a longshoreman and in the course of this employment sends the longshoreman aboard a vessel to assist in loading her, is not maritime in its nature, **especially where, as in the instant case, there is no allegation in the petition that the accident was caused by some negligence of the vessel, its owner, officers or crew.**

Campbell vs. Hackfeld & Co., 125 F. R. 696.

For the employment of the longshoreman may have been as well for **work on shore** as for work on the vessel, and admiralty is without jurisdiction **where even a clearly maritime contract is so inseparably connected with a contract which is not maritime in its nature, that one cannot be decided without the other.**

Turner vs. Beacham, Fed. Cas. No. 14,252.

Admiralty has no jurisdiction over preliminary contracts leading to maritime contracts, irrespective of the name given them.

The Tribune, Fed. Cas. No. 14,171.

The nature and character of the contract of service decide whether they are within the jurisdiction of admiralty, and not the place of performance, whether on land or on water.

Workman vs. Griffith, Fed. Cas. No. 18,057.

Counsel for plaintiffs in error cite *Southern Pacific Co. vs. Jensen*, 244 U. S. 207. The distinction between that case and the one at bar is clear.

In the *Jensen case*, the plaintiff in error was in New York engaged exclusively in the operation of steamships; its employee was engaged for the sole purpose of loading and

unloading cargo from vessels; the suit was brought against this ship-owning and operating concern.

In the instant case, the suit is not **against a ship-owner** at all; it is against one who loads ships. The suit is not **by an employee of a ship-owner;** it is a suit against an employer who may contract to do any kind of work, who is not engaged solely in moving cargo or working aboard a vessel. Suppose the defendant in error in this case had been injured while working on the dock, would the employment have been maritime?

Where the owner of a ship employs a man to work for him **to load and unload the vessel,** and in the course of his employment the man is injured on the wharf **in work connected with the vessel,** admiralty jurisdiction may still attach, though the injury was done on shore, because the contract of employment, as in the *Jensen case,* was maritime in its character.

But if one not a ship-owner employs another, and the employee in the course of his work is injured on a vessel, admiralty jurisdiction does not attach, because the contract of employment was not maritime in character, and the mere fact that the injury was sustained on a vessel does not make it so. The employee could as well have been working in a warehouse or elsewhere where his employer ordered him to work.

It is error to contend that the place of injury controls the rights of men. That merely because one is injured on board a vessel, admiralty alone affords relief. It is not the **place** where the accident happened—it is the original contract of employment which determines.

Northern Pacific S. S. Co. vs. Hall Bros. Marine R. & Shipbuilding Co., 249 U. S. 119.

If the Court should agree with us that this was not a maritime contract, that at best it was an ordinary preliminary contract between residents of New Orleans, which led sometimes to work maritime in its nature, like loading a vessel, then the writ of error must be dismissed.

II

Even if the contract be held maritime, the plaintiffs in error are still liable.

In the agreement of counsel, printed at the very opening of this brief, it is said under the laws of Louisiana the employers were under **obligation** to pay their employees compensation for injuries received while so employed.

Now in the civil law which obtains in Louisiana the word "obligation" has the meaning of "contract."

Bouvier's Dictionary, *verbo* "obligation."

Revised Civil Code of Louisiana, Title III, especially Articles 1760, 1761.

And the Employers' Liability Act of Louisiana, Section 3, specifically provides:

> "SECTION 3. "* * * That this act * * * shall not apply to any employer or employees engaged in the trades, businesses and occupations specified in paragraph 2 of Section 1 * * * unless prior to the injury **they shall have so elected by agreement, either express or implied.** * * * **Such an agreement shall be a surrender by the parties thereto** of their rights to any other method, form or amount of compensation * * * and shall bind the employee himself, his widow * * * etc." (Writer's black letters.)
>
> Act 20, 1914, page 46.

It is therefore clear that both under the contract of employment and otherwise the plaintiffs in error virtually said to the defendant in error, "Surrender all your legal rights to recover for injuries done you while in our employ, and we obligate and contract that, quite regardless of whether we are liable in law or not, we will pay you compensation under the Employers' Liability Act," and Veasey accepted the proposition and the contract was complete.

From this it logically follows that even if the contract of employment was maritime in its nature, and that therefore or for some other reason the plaintiffs in error would not be liable, in the absence of the subsequent contract to compensate formed between them, yet it is respectfully submitted that the contract of compensation was formed, and its very purpose and object was to compensate where there was no legal liability.

The object to be achieved by the enactment of the Employers' Liability Act of Louisiana, and of—it may be assumed—every other State that has adopted the system, is to do away with the question of legal liability *vel non*, and to substitute the more moderate compensation given by the Act. If now the employer can come into Court and say, "Your contract of employment with us was maritime in its nature, therefore it can be enforced only in admiralty, and there you will have to show that we are in fault before you can recover," then does not the attitude of the plaintiff in error completely evade the subsequent express contract about compensation? The very purpose of this express contract was to avoid the question of fault for the accident, and yet the plaintiff in error contends that he can avoid his contract of compensation by appealing to a jurisdiction which does not—or did not at the time—consider itself controlled by the Compensation Act.

The issue here is not whether an admiralty Court will give effect to the Compensation Act of Louisiana; the real issue is, **will the plaintiffs in error be permitted to escape a contractual liability to compensate the employee when injured?**

III

Assuming the character of employment to have been maritime, is the plaintiff in error—the Ætna Life Insurance Company—released?

In the "agreement of counsel as to preparation of record" (Tr. p. 39) it is said:

> "Under the law of Louisiana the employers were under obligation to pay their employees compensation for injuries received while so employed by them, and to secure themselves against claims of this character Henry and Eugene Peters had obtained from the Aetna Life Insurance Company a policy of insurance by which the company bound itself to pay all claims for compensation made by employees, the assured, and covered by the law of Louisiana on the subject—namely, Act No. 20 of 1914."

The insurance company, which took a premium to insure the payment of the sum due under the Compensation Act, cannot at all plead the want of a cause of action, or the want of jurisdiction. The insurance company is bound by its collateral contract of insurance. Even if it be true that the original contract of employment was maritime in its character, yet the insurance contract, guaranteeing the payment of compensation, is not by any stretch of the imagination anything but an obligation entered into to pay a certain sum of money in the event of an injury to an employe of the assured, regardless of how or where the injury was sustained.

The contract of insurance is the obligation of the company to pay the plaintiff the compensation, this is an entirely separate contract from the one of employment. The latter may be maritime in its nature, but it does not affect the separate and collateral contract which the insurance company made and by which it is obliged to pay the compensation due the plaintiff.

In connection with this point, we again cite *Turner vs. Beacham*, Fed. Cas. No. 14,252, to the effect that admiralty courts are without jurisdiction where even a clearly maritime contract is so inseparably connected with a contract which is not maritime in its nature that one cannot be decided without the other.

The jurisdiction of the State courts of the parties to the collateral contract of insurance was complete, and the insurance company is bound in any event.

IV

This brings us to the Act of Congress approved October 6, 1917, No. 82, Sixty-fifth Congress, entitled:

> "An Act to amend Sections Twenty-four and Two Hundred and Fifty-six of the Judicial Code, relating to the jurisdiction of the District Courts, so as to save to claimants the rights and remedies under the workmen's compensation law of any State."

In *Coon, Plaintiff in Error, vs. Kennedy*, 248 U. S. 457, the plaintiff below brought her writ of error from the Supreme Court of New Jersey, where her claim for compensation under the Compensation Act of New Jersey had been denied because the contract was held to be maritime, and because the Act of Congress was enacted after the injury out of which the claim arose.

Your Honors, in a memorandum opinion, dismissed the writ for want of jurisdiction, holding—

> "* * * there was no decision against the validity of a treaty or statute, or an authority exercised under the United States, nor in favor of the validity of a statute of, or an authority exercised under, a State challenged because of repugnance to the Constitution, treaties or law of the United States."

In other words, the Supreme Court of New Jersey held that the amendment of Sections Twenty-four and Two Hundred and Fifty-six was not applicable because enacted after the cause of action in that case arose. This Honorable Court declined to take jurisdiction, and thus it may be argued the decision of the Supreme Court of New Jersey was thus affirmed.

It is respectfully submitted that a refusal to take jurisdiction does not mean an affirmance even in a case like that of *Coon vs. Kennedy.*

Treating the matter, therefore, as *res integra,* it is respectfully urged that the Act affects the jurisdiction of the admiralty and State courts, and just as a claimant may assert any common law right in a State Court, so he may now assert his claim for compensation in a State Court, although the claim rose out of a maritime contract. It is thus an Act which confers jurisdiction on the courts of the State in matters in which they formerly were without jurisdiction.

The cause of action arose August, 1915 (Tr. p. 2); suit was filed March 22, 1916 (Tr. p. 2); no exception was filed to the jurisdiction in the trial Court, and answer was filed March 29, 1916 (Tr. p. 4). Judgment below went against the defendant, plaintiffs in error, and appeal was

taken to the Supreme Court of Louisiana, January 26, 1917, and answer to appeal filed March 8, 1917 (Tr. pp. 16, 17). On June 11, 1917, the defendants below, plaintiffs in error, filed an "exception of no right or cause of action" in the Supreme Court (Tr. p. 18), and in support of this exception took the position that the compensation act did not apply to maritime contracts, as decided by this Court in *Southern Pacific Co. vs. Jensen,* 244 U. S. 205, and finally decided May 21, 1917.

Now it is quite clear that there always was a cause or right of action, only the State courts could not take cognizance of it until after the amendment of the judicial code. But the judicial code having been amended and the State courts given jurisdiction to entertain such causes of action, the question is this:

If one has a cause of action, but for some reason there is no court with jurisdiction to entertain it, can he not assert this cause of action after the court is given jurisdiction?

If the answer be in the affirmative, then it follows that even if the courts of Louisiana were before the amendment of the judicial code without jurisdiction to entertain the claim of the defendant in error; yet where by a change in the law they became seized of jurisdiction to entertain it, they could decide the case, if it was still pending undecided after jurisdiction was acquired. The final opinion of the Supreme Court of Louisiana was rendered February 25, 1918 (Tr. p. 127).

In *Simmons vs. Hanover, etc.,* 23 Pick (Mass.) 188, the Court said, at page 192:

> "It has been argued by the defendant's counsel that at the time of the filing of the bill this Court had no jurisdiction. * * * In one aspect of the

cause these grounds of defense would require great consideration; but, according to the view we have taken of the case, **the question whether the Court had jurisdiction at the time of filing the bill becomes immaterial, and we have not considered it because by the St. 1839, C. 60, full jurisdiction is given to the Court."**

Bass vs. Y. & M. V. R. R. Co., 136 L., 528.

Morgan's L. & T. R. R. & S. S. Co. vs. Railroad Commission, 138 L., 377.

We submit that it is only a question of jurisdiction. U. S. Constitution, Article III, Section 2, Judicial Code, Section 24:

"The district courts shall have original jurisdiction * * * (Third) of all civil causes of admiralty and maritime jurisdiction, etc."

Knapp, Stout & W. vs. McCaffery, 177 U. S. 638.

Steamboat Co. vs. Chase, 16 Wall. 522, is in point. One Cook, while sailing in Narragansett Bay, was run over by a steamboat and as a result of the collision lost his life. Chase, the administrator of the deceased, brought his suit to recover for the death of Cook, a right conferred by the laws of Rhode Island, within whose confines are the navigable waters on which the death occurred.

Judgment was rendered in favor of the administrator, and a writ of error issued by the Supreme Court of the United States to the Supreme Court of Rhode Island. The Supreme Court of the United States held, page 530:

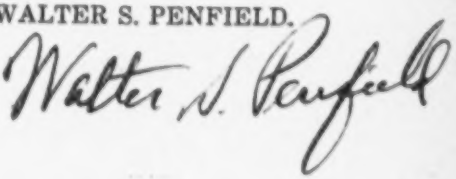
"Where no remedy exists for an injury in the admiralty courts, the fact that such courts exist and exercise jurisdiction in other causes of action leaves

the State courts as free to exercise jurisdiction in respect to an injury not cognizable in the admiralty, as if the admiralty courts were unknown to the Constitution and had no existence in our jurisprudence."

We therefore pray that the writ of error be dismissed.

Respectfully submitted,

WALTER S. PENFIELD.



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